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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 206.

FRANCIS M. LONG AND HIS WIFE, BETSY A. LONG, PLAINTIFFS IN ERROR,

vs.

DANIEL BULLARD.

IN ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

FILED MARCH 19, 1883.

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1 To the honorable supreme court of the State of Georgia:

The petition of Francis M. Long respectfully shows that Daniel Bullard filed his proceeding in equity against your petitioner and his wife, Betsy A. Long, (who joins with him in this petition so far as it is necessary or proper for her to do so,) returnable to the April term of the superior court of the county of Bibb and State of Georgia, for the purpose of enforcing his equitable mortgage lien against city lots number (5) five and (6) six, in square number (90) ninety, in the city of Macon, in said county, on a deed made by petitioner and his said wife, Betsy A., for said lots, to secure the payment of a promissory note made by petitioner and his said wife, payable to the said Daniel Bullard twelve months after the date thereof, at Macon, Georgia, November eighteenth, eighteen hundred and seventy, for the sum of twelve hundred & twenty dollars, and if not paid promptly to bear interest at the rate of ten per cent. per annum, and
2 also to pay all costs & counsel fees incurred by said Bullord or his transferee in collecting said note.

To which proceeding in equity, which was duly served, petitioner replied, among other —, that since the execution of said deed to said property to secure said debt he had been adjudged a bankrupt on his own application, and that he had returned said property in his schedule in said bankrupt proceeding as his property, and that notice of his said application and of said proceedings in bankruptcy was duly given to said Daniel Bullard; that said property had been under and in said proceedings set apart and allowed to him as a homestead exemption without objection, and that he had been duly and legally discharged in said proceedings from said debt, which was provable in bankruptcy, and from all other debts of that character, and that their property, under the bankrupt law or acts of [the] Congress of the United States, was no longer subject to said debt or the said deed, but that petitioner held the same now free from that debt and from all other debts provable in that proceeding, and on these and other issues the said
3 cause went to trial before said superior court of Bibb county, in said State, at the October adjourned term 1880; and on the 29 day of January, 1881, of said term, which resulted under the charge of the court in a verdict for the said Daniel Bullard, charging said property with the payment of said debt, to the amount of one thousand dollars and forty cents for principal, eight hundred and twenty dollars and three cents for interest to that date, and two hundred dollars for attorney's fees. In that trial it was expressly admitted and not in issue that the defendant had applied for the benefit of the bankrupt law, and had been adjudged a bankrupt; that he returned this property in his schedule in his said proceeding as his property to be administered in that proceeding; that Daniel Bullard was duly notified of said proceeding in bankruptcy, though he did not appear and prove his said debt; that petitioner claimed this property as an exemption under the bankrupt law, and that the same was allowed & set apart to him as an emption

under that proceeding, and that he received his final discharge in that proceeding.

4 To that verdict so rendered petitioner and his said wife moved for a new trial on a number of grounds, all of which appear in the record and proceedings of said cause, & amongst which are that the said verdict was against law and against the evidence, and because the court erred in charging the jury. "Long's (your petitioner) discharge in bankruptcy will not prevent Bullard (the complainant) from recovering, if he lent defendants (your petitioner) the money at their solicitation (petitioner & wife) to relieve the property from an encumbrance created on the 14th day of April, 1868," &c.

The said superior court of Bibb county, on hearing said motion, granted the new trial on the ground that the money not paid the building and loan association, & the money paid the attorneys, should not, by a judgment of foreclosure, be enforced against the homestead of Mrs. Long, the wife of petitioner, which was a question in said cause under a homestead granted by the State court without passing on the other grounds. To this judgment the complainant (Bullard) excepted (no cross bill of exceptions having been filed by Long & wife and brought to this court to the judgment

5 of the court overruling the other grounds of the motion for a new trial), and carried the same to the supreme court of Georgia by bill of exceptions, and on the hearing of the same at the September term, 1881, the judgment of the court below granting said new trial was affirmed by the supreme court of Georgia unless said complainant, Daniel Bullard, would write off from his verdict the sum of three hundred dollars, to which decision and judgment of the supreme court of Georgia, the same being the highest court of law or equity in said State, petitioner excepts and assigns the same as error (none having been assigned at that term of the court at which said decision was rendered), all of which appears in the record and proceedings in said suit, manifest error hath happened to the great damage of your petitioners.

The said cause went back to the said superior court of Bibb county on this ruling, and again came up for hearing in that court on the — day of ——, in the year eighteen hundred and eighty-two,

6 when the said complainant wrote off from his said verdict the said sum of three hundred dollars, in accordance with the requirements of the supreme court, and thereupon said superior court gave and entered a decree over the objection of your petitioner, charging said property so set apart and secured to your petitioner, Francis M. Long, as exempt from said debt in the bankruptcy proceeding aforesaid, and charging your petitioner, notwithstanding his said discharge in said bankrupt court from his said debt, with the payment of the same *quoad hoc* this property, to which said decree so rendered your petitioner, in conjunction with his wife, Betsy A. Long, who was a party to the same, excepted and carried the same to the supreme court of Georgia by bill of exceptions for review according to the statute in such cases made and provided. And the same came on for hearing in the supreme court, the same being the

highest court of law or equity in said State at which said cause could be heard, and on the first day of November, in the year eighteen hundred and eighty-two, on the said hearing, there was drawn in
7 question, and decided by said court, that the judgment pronounced in this case when it was here at the last term was conclusive on the questions there presented, and that the decree in the court below now excepted to was in conformity with that judgment, and that a failure on the part of Long and wife to except to the overruling of their motion for a new trial, on the other grounds than that upon which it was allowed, was conclusive against them, & could not now be reopened, and who then and there instead affirmed the judgment and decree of the court below, thus cutting off your petitioner's said exemption in and to said property, under the aforesaid bankruptcy proceedings & laws of the United States, as against said debt, as well as charging his said property with the payment of the said debt of the said Daniel Bullard, from which he had been fully discharged by the laws of the United States, in the said bankruptcy proceedings, to which said decision and judgment of the said supreme court of Georgia your petitioner then & there excepted, and here
8 now excepts and assigns the same as error, all which appears in the record and proceedings in said suit, manifest error hath happened to the great damage of your petitioner, the said Francis M. Long, and his said wife.

Wherefore your petitioner prays for the allowance of a writ of error and such other process as may cause the same to be corrected by the Supreme Court of the United States.

R. F. LYON,
Att'y for Petitioner.

Approved and writ of error allowed 10th Nov., 1882.

JAMES JACKSON,
Chief Justice of the Supreme Court of Georgia.

Filed in office of clerk supreme court of the State of Ga., Nov. 10th, 1882.

Z. D. HARRISON, *Clerk.*

9 [Endorsed:] Francis M. Long & wife *vs.* Daniel Bullard. Copy. Petition for writ of error to Supreme Court of the United States. R. F. Lyon.

10 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Georgia, Greeting:

Because in the record and proceedings, and also in the rendition of a judgment of a plea which is in said supreme court of the State of Georgia, before you or some of you, being the highest court of law or equity in said State in which a decision could be had in said suit, between Francis M. Long and his wife, Betsey A. Long, plaintiffs in error, and Daniel Bullard, defendant in error, wherein was drawn in question the construction of a statute of the United States,

and the decision was against the right, privilege and exemption specially set up and claimed under said statute, a manifest error hath happened to the great damage of the said Francis M. Long and his said wife, as by their complaint appears. We being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you that if judgment be therein given, that then, under your seal,
11 distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with the writ, so that you may have the same at Washington on the second Monday of October next, in the said Supreme Court, to be then and there held, that the record of proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 29th day of November, in the year of our Lord one thousand eight hundred & eighty-two.

[U. S. Circuit Court N. D. Georgia.]

A. E. BUCK,
Clerk U. S. Circuit Court N. D. of Ga.

12 [Endorsed:] In the Supreme Court of the United States. Francis M. Long & wife *vs.* Daniel Bullard. Error from the supreme court of Georgia. Writ of error. Filed in clerk's office supreme court of the State of Ga., Nov. 10, 1882. Z. D. Harrison, cl'k. R. F. Lyon.

13 United States of America to Daniel Bullard, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday in October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Georgia, wherein Francis M. Long and his wife, Betsy A. Long, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties *to the parties* in that behalf.

Witness the honorable James Jackson, chief justice of the supreme court of the State of Georgia, this the 22nd day of November, in the year eighteen hundred & eighty-two.

JAMES JACKSON,
Chief Justice Supreme Court of Georgia.

14 [Endorsed:] In the Supreme Court of the United States. Francis M. Long & wife *vs.* Daniel Bullard. Writ of error from the supreme court of Georgia. Citation. Filed in clerk's office supreme court of the State of Ga., Nov. 10, 1882. Z. D. Harrison, cl'k. R. F. Lyon.

15 GEORGIA, *Bibb County:*

To his Honor W. L. Grice, of the superior courts of the Macon circuit, entertaining chancery jurisdiction, Daniel Bullard, of Twiggs county & said State, brings this his bill against Francis M. Long & his wife, Betsy A. Long, of said Bibb county; and therefore your orator complains & says that heretofore, to wit, on or about the 14th day of April, in the year A. D. 1868, said Francis M. Long, in consideration of money advanced to him, executed, in favor of the Ocmulgee Building & Loan Association, his bond for $3,400.00, and to secure the payment of which he also executed in its favor his deed of mortgage on that parcel of land situate, lying, and being in the city of Macon, in said county & State, & being, according to the plan of said city, parts of lots numbers five and six (5 & 6), in square number ninety (90), fronting on Oak street ninety-one (91) feet & nine inches, and running back the same width one hundred & fifty-one feet four inches (151 ft. 4 in.), bounded on the east by a ten-foot alley, & being part of what was formerly known as the "South-western Hotel" lot, lying immediately on said alley, the said
16 mortgage having been duly foreclosed at the April term, 1871, of the superior court of said county, in the sum of $2,064.90, [with] interest to 5th day of May, 1871, $77.60, and ——, costs of foreclosure proceedings & execution for said sums, in favor of said association against said Francis Long & against said described property, was issued, being dated the 5th day of June, 1871, & placed in the hands of the sheriff of said county for levy on & sale of said property, which sheriff levied on said property on the 31st day of July, 1871, & proceeded to advertise the same for sale according to the directions of said *fi. fa.* Pending this proceeding to sell, the said Francis M. and Betsy A., his wife, after repeated solicitations, got orator's consent to advance, on the security of said property, an amount *of* hereinafter mentioned, in order to enable him, said Long, to make a compromise settlement with said association & to secure said property from the sale then about to take place, he, said Long, being then unable to raise the money needed in any other way. Accordingly your orator advanced, by way of loan, to said Long & wife, the sum of twelve hun-
17 dred & twenty dollars, taking their note, payable 12 months after date, for the sum, and to secure the payment of which a deed to said property, in favor of your orator, executed by said Long & his said wife, Betsy A. Long, in writing, dated the 11th day of November, A. D. 1872, and which was duly recorded, a copy of which note and deed is each hereto attached as part hereof, marked Exhibits A & B, respectively, to which the usual leave of reference is prayed; the said deed was, at the time of its execution, approved & consented to by Charles T. Ward, the then ordinary of said county, this being then deemed proper, because said Long before that time (and as your orator now avers illegally and with fraudulent intent, to hinder & delay said association in the collection of its said debt) had caused the ordina-y of said county to have said property set apart as a homestead for his family, the said Betsy Ann having filed her

petition therefor. The money so advanced was used by said Long & wife in extinguishing said mortgage *fi. fa.* & lien on said property; and your orator avers that before the said mortgage *fi. fa.* was so extinguished it did constitute a lien & incumbrance on said
18 property for the said sum of $2,064.90 & interest & costs, and that said incumbrance constituted one of the exceptions specified in the homestead law, and said incumbrance could not be, & was not, divested or in any wise affected by the said homestead application & judgment thereon, the said debt & the mortgage having been created & given prior to the adoption of the constitution of 1868 of this State, said debt and mortgage dated April 14th, 1868, & the said constitution having been adopted the 25th day of July, 1868.

Your orator further states that said note of $1,220.00 has never been paid, nor has any part thereof; that after giving said note to said Francis M., filed his petition in bankruptcy, stating therein in substance the facts aforesaid relative to the conveyance of said land & the giving of said note; that the title to said land was in your orator, but asking that it be exempted and set apart as a homestead for himself and family, & which appears thereafter to have been done by the assignee in bankruptcy, so far as his act was concerned; but your orator did not prove his debt in the bankrupt proceedings, or make himself in any way a party thereto; said Francis
19 M. claims to have obtained his final discharge in bankruptcy, & that your orator's said debt is thereby discharged; said Betsy A. Long never has applied for or obtained a discharge in bankruptcy.

Your orator avers his said debt & title to said land are in nowise affected by said homestead & bankruptcy proceedings, & that your orator is entitled to have said land sold and the proceeds applied to the payment of said debt. Your orator also states that said Long & wife have remained in possession of said land since said deed was made, & since his said debt became due have refused and continue to refuse to give possession thereof to your orator. He states that the title thereto having vested in him as a security for his debt merely, and as he does not seek to hold and use the same for any other purpose than to have it applied towards paying his said debt, and the reasonable incidental expenses incurred by him in keeping the property insured, amounting to about the sum of $1,000.00, he is willing and now offers to said Long & wife to allow & have said property sold, & after applying the proceeds, if enough, to your orator's said debt and expenses, and if more than enough to
20 go to said Long & wife, to be applied as may be proper under the facts of the case, and in order to said sale your orator also offered to execute a deed in favor of said Long, to be deposited in the clerk's office, so that the title to said property can be conveyed to the purchaser.

Your orator states the deed from Long and wife, though drawn a few days before the date of said note, was in fact executed at the same time the note was given. When the deed was prepared $1,180.00 was the amount of money expected to be needed, but when

the note was given $1,220.00 was found to be the amount required; all which actings and doings on the part of said defendants in trying to avoid the payment of orator's said debt, & refusal to surrender the possession of said property, are contrary to equity & good conscience, and tend to the manifest wrong and injury of your orator, & there being no adequate remedy at law, he prays for a decree of the court that your orator recover of the defendants, Long & wife, the said amount of principal, interest, & cost due him as aforesaid; that his title in and to said land be decreed to be good, as claimed by him, free from any claim on the part of said def'ts, on account of their respec-
21 tive homestead and bankrupt proceedings; that they yield possession thereof in his favor, and that said land be sold by the sheriff of said county, according to law governing sheriff's sales, and that the proceeds of the sale thereof be applied to the payment of your orator's said debt & costs, as hereinbefore proposed, and the overplus, if any, to go to said Long & wife, on such terms or in such way and for such purpose as the court may decree proper. Your orator prays for such other & further relief as his case requires, or as to the court shall seem meet. Your orator waives discovery as to said defendants; and they further pray that the State's writ of subpœna do issue against said defendants, *r*ender a proper penalty, directed to said Francis M. Long and Betsy A. Long, requiring them & each of them to be & appear at the next term of the superior court of said Bibb county, then and there to stand to, abide by, do, & perform the order & decree of the court in the premises. And orator will ever pray, &c.

LANIER & ANDERSON,
Compl'ts' Sols.

22 "EXHIBIT A."

$1,220.00. MACON, GA., *Nov.* 18*th* 1872.

Twelve months after date we, or either of us, promise to pay Daniel Bullard, or bearer, twelve hundred & twenty dollars, for value received. If not paid promptly at maturity, this note to bear interest from its date at the rate of ten per cent. per annum; and we are also to pay all costs & counsel fees incurred by said Bullard or his transferee in collecting this note.

(Signed) F. M. LONG.
B. A. LONG.

EXHIBIT "B."

GEORGIA, *Bibb County:*

This indenture, [made] the eleventh day of November, in the year of our Lord one thousand eight hundred & seventy-two, between Francis M. Long & his wife, Betsy Ann Long, of the county of Bibb, of the one part, and Daniel Bullard, of the county of Twiggs, of the other part, witnesseth: That the said party of the first part, for and in consideration of the sum of eleven hundred & eighty dollars in hand paid, at and before the sealing & delivery of these presents,

the receipt whereof is hereby acknowledged, have granted,
23 bargained, sold, aliened, conveyed, & confirmed, & by these presents do grant, bargain, sell, alien, convey, & confirm, unto the said Daniel Bullard, his heirs & assigns, all those parcels of land situate in the city of Macon, in said county & State, & known in the plan of said city as parts of lots numbers five & six (5 & 6), in square number ninety (90), fronting on Oak street ninety-one feet and nine inches & running back the same width one hundred & fifty-one feet four inches, & bounded on the east by a ten-foot alley & in the rear by a lot in possession of Daniel M. Smith, & known as part of the "Southwestern Hotel lot," & that part lying immediately on the ten-foot alley, as aforesaid, the same being property set apart as a homestead for the family of said Long, & now conveyed by the approval of the ordinary of said Bibb county:

To have & to hold the said bargained premises, with all and singular the rights, members, & appurtenances thereunto appertaining, to the only proper use, benefit, and behoof of him, the said Daniel Bullard, his heirs, executors, administrators, & assigns, in fee simple, and the said Long & wife the said bargained premises unto
24 the said Daniel Bullard, his heirs, executors, administrators, & assigns, against the said Long and wife, their heirs, executors, & administrators, & against all and every other person or persons, shall & will warrant & forever defend by virtue of these presents.

In witness whereof the said parties of the first part have hereunto set their hand- and affixed their seal-, & delivered these presents, the day & year first above written.

F. M. LONG. [L. S.]
B. A. LONG. [L. S.]

Signed, sealed, and delivered in presence of—
J. P. NEAL.
A. B. ROSS,
D. C'k Superior Court.

GEORGIA, *Bibb County:*

I, Charles T. Ward, ordinary of said county, do consent to & approve the foregoing deed of F. M. Long and wife, for the consideration therein expressed.

Witness my hand.

C. T. WARD, *Ordinary.*

Nov. 11th, 1882.

25 *Bill for Relief, &c., in Bibb Superior Court, to April Term,* 1878.

GEORGIA, *Bibb County:*

DANIEL BULLARD, Complainant,
[*vs.*]
FRANCIS M. LONG & WIFE, Defendant, } In Equity.

To the defendant:

For the causes set forth and assigned in the annexed & foregoing

bill on the part of the compl't, you are hereby required that, laying all other business aside, & notwithstanding any excuse that you may have, you do be and appear before us in our chancery, at the superior court to be held in & for the county of Bibb, on the fourth Monday in April next, then and there to answer those things which may be objected to you in the premises; & further to do & perform, stand to & abide by, such further order and decree as may be made by our said court in this behalf, & which you may in nowise omit, under penalty of the law in such case made and provided.

Witness the Hon. W. L. Grice, judge of said court, this 9th day of February, 1878.

GEO. W. SIMS, *D. Clk.*

26 Filed in Office February 9th, 1877.

GEO. W. SIMS, *D. Clk.*

Served Francis M. Long & Betsy A. Long each with a copy of the within writ by leaving the same at their place of residence.

This Feb'y 20th, 1878.

WM. FOSTER, *Deputy Sh'ff.*

27 In Bibb Superior Court. In Equity.

DANIEL BULLARD

vs.

FRANCIS M. LONG & his wife, BETSEY A. LONG.

The joint & several answers of the defendants, Francis M. Long & Betsey A. Long, to the complainant's above bill of complaint, these def'ts not waiving any exception or right of exception to the manifold uncertainties, imperfections, and irregularities in said bill contained, but reserving the benefit of all objections & right of objections thereto by way of demurrer or otherwise, for answer to said complainant's bill, and such parts thereof as they are advised or are material for them to make answer to, answering, says the said Francis M. Long admits that, on the 14th April, 1868, for the consideration stated, he did execute a mortgage to Ocmulgee Building Loan Association on lots 5 & 6 in square (90), in said city of Macon, the lot named, to secure his bond to said association for the
28 sum of $3,400, which mortgage was duly foreclosed for perhaps the nominal amount stated in said bill; but there was in fact no such sum actually due on said mortgage, but a much less sum, & for which execution issued, was levied, and property advertised, he thinks likely, as stated in compl't's bill, he not being able in the absence of the paper to recollect or state the facts particularly. Both defendants say that it is not true, as stated, that pending the proceeding to sell said property under said mortgage foreclosure they, after repeated solicitation, got said complainant's consent to advance on the security of said property the amount of money therein referred to in order to enable defendant Francis M. to make a compromise settlement of said mortgage debt with said Building & Loan Association; on the contrary, a few days before the time appointed

for the sale of said property under said levy, def't Francis M. met the complainant in Macon, the said compl't having visited the city at his request, the def't Betsey A. Long not being present nor
29 having up to that time seen or conferred with Mr. Bullard in any respect on the subject, and in this interview Francis M. told said Bullard that he wanted to borrow some money on the security of his house & lot in said city, the property already referred to, the defendant not stating what he wanted with the money, nor the said Bullard enquiring. Complainant had before that time seen the property & knew what was its value; he then agreed to let him have what money he wanted, for the loan of which said Francis M. agreed to pay said Bullard at the rate of one & a half per cent. per month for twelve months. Complainant then appointed a day when he was to come back to Macon & let him have the money, & on the day appointed he did return, and before he let the defendant, Francis M., have the money, he, def't, told Bullard the uses for which he wanted the money—that is, to compromise or settle the claim aforesaid of the building & loan association. Bullard replied that he did not care what he wanted with the money, that
30 was none of his business, or something to that effect. They then went to the office of Lanier & Anderson, who drew up the deed & note, copies of which are attached to complainant's bill. Defendant, Francis M., took the mortgage & note, as drawn up by Lanier & Anderson, carried them out to his house, got the witness to come into his house, & then called in the def't, Betsey A. Long, & the note & deed *was* signed by both defendants—by the defendant Betsey A. Long without her, in fact, having read either the deed or note or heard them read, and she did not, in fact, know what the papers were that she was signing, but signed them simply and solely at the request of the said Francis M. Long. The said deed & note being so executed by both def'ts, defendant Francis M. Long carried the papers so executed back to the office of Lanier & Anderson, and delivered them to the compl't, who was present, & he therefore delivered to said Francis M. Long his check on one of the banks in Macon for the sum of one thousand dollars and forty cents, being the whole amount he or any one else received on account
31 of said note, the balance of said note being usurious, and amounted to so much by the calculation of interest at the rate of one & a half per cent. per month, or 18 per cent. per annum, on the $1,220, the amount of the note, instead of the money received. Said Francis M. Long handed the check given him by Bullard to Mr. Lanier, who collected it, and after doing so retained of the proceeds the sum of seven hundred & twenty-seven 94 ($727.94), and handed the balance of the proceeds of said check to said Francis M. Long, the said Betsey A. Long not being otherwise present or taking other & further part in the transaction therein, as above stated; nor did she receive a single dollar of the money, but the whole of it was applied to the debt of the said Francis M. Long, as above stated, and the balance retained and used by him as his own property. It is true that a homestead exemption had before that time been set apart by the ordinary of said county in & to said

property for the benefit of the wife of said Francis M., the said defendant Betsey A., and their children, & on the application
32 of the said Betsey A.; but it was not done to fraudulently or otherwise illegally to hinder & delay said Building & Loan Association, but under the following circumstances: Def't Francis M., being absent from home in pursuit of his business, said property was levied on to satisfy a debt in favor of Gumun, Johnson & Co., & at their instance, & pending the advertisement of the property under that levy, or pending that levy, the homestead was applied for on account of that levy, & to protect it as a homestead under the law for the said wife & children from sale under such levy.

Of the money loaned by said Bullard, not advanced to said Francis M. Long, as the fruit of the said deed for said property as aforesaid, only the sum of seven hundred & twenty-seven ^{94} ninety-four cents ($727.94) was applied to the extinguishment of the mortgage lien in favor of said Building & Loan Association, that being the whole amount that really & in truth was due on said debt to said association.

Defendant denies that compl't is entitled to any advantages
33 under the law or benefit that might have existed in favor of the debt as due the Building & Loan Association, nor any equities on account thereof—it was not his claim—he did not buy it, nor had, nor has, any interest in it; he loaned defendant, F. M. Long, the money and took his deed on the property for its security, & that a part of the money so loaned went in extinguishment of said debt, & the lien on the property conveyed neither gave the said complainant any title, interest, or claim on said debt or the right to control the lien, but both were absolutely extinguished & satisfied, & defendant plead the same in bar of such perpetual equity of said complainant. Defendant further say that at the time of said conveyance to said Bullard the homestead exemption in & to the said lots for the benefit of the said Betsey A. Long & her children, of complainant, was a valid and legal homestead under the constitution and laws of the State of Georgia, & was not destroyed, departed or impaired by said conveyance, but the same remained and
34 continued and is now a valid homestead under the law against the said debt of said complainant and said conveyance, and def't now pleads the same in bar of the relief said complainant asks by this said bill, to have the said property sold for the payment of said debt, a copy of which said homestead exemption is hereunto attached, marked Exhibit "A," to which defendants pray the usual and all necessary leave of reference.

Defendant Betsey A. Long further says that the debt of the said compl't, as set out in his said bill, was the debt of the said Francis M. Long and not the debt of defendant Betsey A. Long; that being his said debt, and this defendant, Betsey, not being interested or having received any of the consideration, she could not be, and was not, bound by her non-execution of said note & deed with the said Francis M., her husband, because it was not her debt, and she, as the wife of said Francis M., could not create any debt or obligation

to pay money that would be binding on her as such wife
35 under the circumstances stated, and she pleads these facts in bar of any liability by her ow- said debt.

Defendant Francis M. Long says, since said debt was created by him, he has been discharged from said debt and all other debts by the bankrupt court of the United States, on his voluntary application, a copy of which said discharge is hereto attached, marked Exhibit "B," to which he prays the usual and all necessary leave of reference, and he here now pleads the same in bar of any relief in favor of said complainant as against him on account of that debt.

Defendants, both answering, say, the said deed of said complainant, copy of which is attached to his bill for the premises involved herein, is absolutely null & void under the law, it having been given to secure the debt of $1,220, as set out in complainant's bill, $219.60 two hundred & nineteen $\frac{60}{100}$ dollars of such is usurious, and that said deed was made as part of said usurious contract, & it is therefore void, and def't plead the same in bar of the relief prayed
36 for by said complainant in his said bill, as to the sale of said property by the decree of this honorable court.

Defendants further say that it is not true that the amount of money expected to be needed when said deed was drawn was $1,180, but when the note was given $1,220 was found to be the amount required. The way the sum of $1,180 came to be named in the deed as the consideration thereof was this: One & one-half per cent. was usury, calculated on the $1,000, which Bullard had agreed to let defendant Francis M. Long have, & when that sum of $180.00 was added to the $1,000 the sum of $1,180 was produced, & it was thought by the draftsman that this was the amount for which the note was to be given, but complainant wanted the one & half per month, not on the money loaned, but on the amount of the note to be given for the loan; so on calculating it was ascertained that $1,220, with one & half per cent. off or discount, would leave him $1,000.40 net cash, & that sum was adopted, the note was given for that amount,
37 & a check given to defendant Long, as above stated, for the $1,000.40, without making any change in the consideration stated in the deed.

And having fully answered, defendants pray to be hence discharged with their reasonable costs.

LYON & GRESHAM,
SAM'L H. JEMISON,
Def'ts Sol's.

GEORGIA, *Bibb County:*

You, Francis M. Long, do swear that the facts set forth & contained in the foregoing joint & several answers of yourself & wife, Betsey A. Long, so far as they depend on your own knowledge, are true, & so far as they depend on the knowledge or information derived from others you believe them to be true.

Sworn to & subscribed before me this 29th March, 1879.

J. A. McMANNS,
Ordinary, Bibb Co., Ga.

38 GEORGIA, *Bibb County:*

You, Betsey A. Long, do swear that the facts set forth & contained in the foregoing joint & several answers of yourself & husband, Francis M. Long, so far as they depend on your own knowledge, are true, & so far as they depend on the knowledge or information derived from others you believe them to be true.

_____ _____.

Sworn to & subscribed before me this 29th of March, 1879.

J. A. McMANNS,
Ordinary, Bibb Co., Ga.

EXHIBIT "A."

BIBB COUNTY, GEO., *December 14th*, 1869.

The plot hereunto attached represents the homestead of Betsey A. Long, of said county, said homestead situated in that part of the city of Macon known as lots numbers five & six, in square ninety, containing one-fourth of an acre, more or less. Said homestead
39 is bounded on the north by Oak street, south by parts of lots Nos. five & six, in square ninety (90), belonging to Viola Smith, east by the ten-foot alley, west by John Lowe.

GEORGIA, *Bibb County:*

Personally came Thomas Butler, who saith upon oath, as county surveyor, that the within plot has been correctly surveyed and plotted, and is not worth a sum exceeding two thousand dollars in specie, to the best of his knowledge and belief.

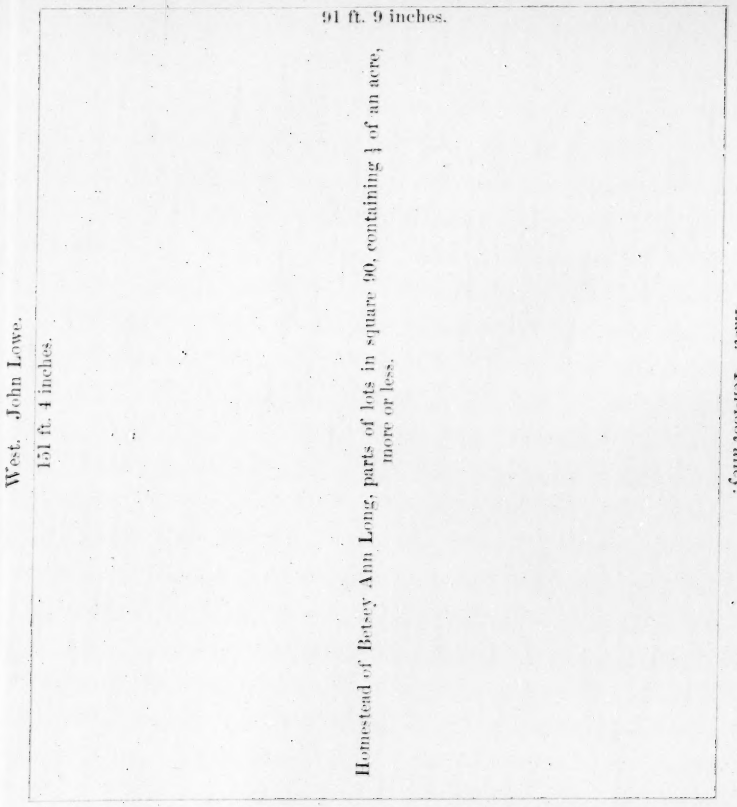
THOMAS BUTLER,
C. S. B. C.

Sworn to & subscribed before me, this 14th day of December, 1869

C. T. WARD,
Ordinary.

Recorded January 1st, 1870.

40 North. Oak street.



South. Lots Nos. 5 & 6, belonging to Viola Smith.

Approved this December 21st, 1869.

C. T. WARD,
Ordinary.

Recorded January 1st, 1870.

"EXHIBIT B."

In the District Court of the United States for the Southern District of Georgia. In bankruptcy.

In the Matter of FRANCIS M. LONG, Bankrupt.

41 SOUTHERN DISTRICT OF GEORGIA, *ss:*

Whereas Francis M. Long, of Macon, in the county of Bibb and State of Georgia, has been by this court duly adjudged a bankrupt under the act of Congress entitled "An act to establish a uniform

system of bankruptcy throughout the United States," approved March 2d, 1867, and the amendments thereto, and appears to have conformed to all the requirements of the law in that behalf: It is therefore ordered by the court that said Francis M. Long be, and he hereby is, forever discharged of and from all debts and claims which by said act are made provable against his estate, and which existed on the twenty-seventh day of May, A. D. 1873; on which day the petition for adjudication was filed by the said Francis M. Long, excepting such debts, if any, as are by said act exempted from the operation of a discharge in bankruptcy.

Given under my hand and the seal of said district court at Savannah, in said district, this the 15th day of April, A. D. one
42 thousand eight hundred & seventy-four.

[L. S. of the court.]

JOHN ERSKIN,
Judge of the District Court U. S. for the Southern District of Georgia.

I, W. M. Heyward, dep't. clerk of the district court of the United States for the southern district of Georgia, do hereby certify that the above is a true copy of an order made in the above-entitled matter.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of Savannah, in the southern district of Georgia, this 21st day of April, in the year of our Lord one thousand eight hundred & seventy-nine, and of the Independence of the said United States the one hundred and third.

[SEAL.] WM. M. HEYWOOD,
Dep't. Clerk of said District Court U. S.

43 In Equity in Bibb Superior Court.

DAN BULLARD *vs.* F. M. LONG & WIFE.

Charge of the Court.

GENTLEMEN OF THE JURY:

In this as in all cases tried in court the jury have nothing to do with the parties nor with making contracts for them. Your duty is to enforce such contracts as the law allows or justifies, irrespective of who the parties are, or of what the consequences may be, and you are to know nothing of the case but what may be learned from the pleadings & evidence in court—such evidence as is submitted to you by direction of the court, and from this you make up your verdict after receiving the charge of the court. You will take the law as given to you by the court. Should the court make a mistake you have nothing to do with that. As to the evidence in the case you are the exclusive judges. It is not the purpose or intention of the court to say or intimate what the evidence is, or what has or has
not been proven. The complainant files a bill against the
44 defendant, charging that on the 14th day of April, 1868, *that* def't, F. M. Long, obtained $3,400 from the Ocmulgee Building & Loan Association, and that he executed a mortgage to secure

the payment of the same, said mortgage covering the property now in controversy; that at the April term, 1871, of the superior court of this county the mortgage was foreclosed for $2,064.90, principal, with interest to 5th day of May, 1871, $77.60; that on the 5th day of June, 1871, a *fi. fa.* was issued, and on the 31st day of July, 1871, the *fi. fa.* was levied by the sheriff. Pending this effort to sell, defendants procured from complainant a sum of money on the security of said property; that the money was to be used in taking & compromising said mortgage *fi. fa.*, which was then about to sell the property; that compl't took the note of defendant for $1,220.00, & took a deed to the property now in controversy; that Mr. Long had taken a homestead on the property, & that the ordinary approved this deed, & that the mortgage *fi. fa.* was a lien of higher dignity
45 than the homestead, having been dated & made before the constitution of 1868, and complainant charges that his money was used in discharging said mortgage *fi. fa.*, which was an encumbrance over the homestead property.

That said Long subsequently went into bankruptcy, and had the assignee to set apart said property as a homestead. That compl't did not go into the bankrupt court with his claim, and did not make himself a party to the same. That the said Long claims to have obtained a discharge in bankruptcy. Complainant says that Long & wife refuse to pay back the money, or give possession of the land, and complainant prays that he have a decree for the amount of the note, and that the land be sold, & the decree be first paid out of the proceeds of the sale, & the remainder go to Long & wife.

Defendants file their answer and say:

1st. Mrs. Long says this was not her debt; that she did not borrow the money; did sign the papers without reading them or hearing them read.

46 2nd. Defendant Long says he got the money of complainant; that the same was a loan by complainant to him; that his wife did not get any of the money; that compl't took a deed or mortgage on the land for security, and said that was all he wanted. That he, def't, used about $700.00 in paying and taking up the *fi fa.* of the Loan Association; that compl't had nothing to do with this; that the remainder of the money was used in taking up some other debts of his; that he went into bankruptcy, and has been discharged. He says that he only got $1,000.40, & that he was to pay 18% for the money; says that the contract contains usury, & that the deed is void. Defendant charges that Mrs. Long took a homestead on the property, & that she was not interested in the money procured from the complainant, and that she signed the paper by the request of her husband, & did not know what the same contained. They claim that the deed is void, & that Long has
47 been discharged from the debt, & that compl't should not recover.

These, gentlemen, are in substance the pleadings in this case, which form the issues to be tried. They are not evidence. I charge you that complainant upon introducing the note in evidence, together with the deed, which has also been introduced in evidence,

would be entitled to a decree for the amount of the note, and also a decree that the property in said deed mentioned be sold & the proceeds applied to the payment of the principal & interest due on the note this complainant would be entitled to if no other evidence was introduced, and you should so decree unless defendants have shown some good and legal reason why such decree should not be rendered. If you find from the evidence in this case that complainant loaned def't a sum of money & took def't's note, & also took the deed of defendants to secure the payment of the note thus given for the money loaned, and in making said loan it was contracted and agreed that defendants were to pay more than 7% for the money thus
48 loaned, these I charge you that the contract was usurious, & that the deed given to secure the payment of the note is and was void as title, & such deed did not convey a title to compl't; and if you should find from the evidence that the contract was usurious, then you would not be authorized to find a decree that the property be sold & the proceeds be applied to the payment of the note in preference to all liens & claims, including the claim of the homestead by defendants, unless for other reasons which will be referred to as I continue this charge. And I further charge you that should you find from the evidence that defendant Long borrowed money from complainant & gave his note, either individually or jointly with his wife, and that Long & wife jointly gave a deed to secure the payment of the note, and should you find that there was usury in the contract, & that subsequently Long filed a petition in bankruptcy and was discharged by the court of bankruptcy, then I charge you that he was discharged from all legal liability to pay the note sued, and no judgment could be obtained against him on the note; but I charge you, if you find Long was discharged in bankruptcy from the payment of the note, & the deed
49 was affected & tainted with usury; yet I charge you that the deed might be foreclosed as a mortgage—that is, complainants could have a decree against the property for the amount of the debt evidenced by the note & the amount stated in the deed. And I charge you further in this connection that while usury would make void the deed as title, yet the same would be good as a mortgage, & the bankruptcy of Long would not discharge the mortgage lien in this case, and the same could be enforced and foreclosed under this bill. I charge you that the paper as a mortgage (if void as a deed) would not create a lien of higher dignity than the homestead, & therefore should you find a decree foreclosing the same, such decree should provide that said property should not be sold under the same during the existence of the homestead estate of Mrs. Long & her children, unless for other reasons which I will give you in this charge. But if there is no usury in the contract—that is, this contract sued on—then compl't would be entitled as against Long to have a decree that the property be sold, and the proceeds ap-
50 plied to the payment of the note sued on, and complainant would be entitled to such a decree, notwithstanding the bankrupt discharge of defendant Long, unless for other reasons to which your attention will be called. In this case defendants say

that the money for which the note was given was borrowed by Long, and that his wife signed with him, but received no part of the consideration, either in using part or all of the money, or in having the encumbrances removed from the homestead. I charge you that should you find this to be true, then you cannot find a decree against Mrs. Long, and cannot find that any decree you may grant under the rules of law I have given you foreclosing the paper sued on as a mortgage could sell the property during the existence of the homestead estate of Mrs. Long & her children. But should you find that Mrs. Long did receive the money for which the note was given, or that the same was applied for the use and benefit of the homestead property, then you should find a decree that the property be sold & the proceeds, or a sufficient amount thereof, applied to the payment
51 of the note sued on. It is claimed in this case by the complainant that the money borrowed by Long was procured with the understanding & for the purpose of paying off the *fi. fa.* then outstanding against the property in controversy, and that the lien of the *fi. fa.* was a superior lien to the homstead of Mrs. Long; as to this I charge you that if the Building & Loan Association had a judgment against Long which was obtained upon a contract dated before July, 1868, then the *fi. fa.* and judgment obtained on such contract would be a superior lien to the claim of the homestead under the constitution of 1868, & such *fi. fa.* and judgment would be an encumbrance on a homestead subsequently taken on the property in question, and if the evidence shows that the *fi. fa.* was about to be enforced by the levy & sale of the property, & for the purpose of preventing such sale, & for the purpose of taking up such *fi. fa.* & judgment complainant loaned the money sued for to the defendants with that purpose and understanding, and if def't Long & his wife gave a note & mortgage or deed for the money thus obtained,
52 then I charge you that such a mortgage or deed thus taken would be a debt used for the purpose of removing an encumbrance from a homestead, and the lien of the same would be superior to the homestead, and in that event you should find a decree subjecting this property. But should you find from the evidence that complainant was not induced to loan the money sued for for the purpose of taking up & satisfying a judgment or other lien that was against defendants, but that the money was loaned by the complainant, he taking a note & deed to secure the sum without reference as to what was to be done with the money, then I charge you that the note & deed does not create a lien superior to the homestead; and in that event should you find a decree foreclosing the paper as a mortgage, you should not find that the property be sold during the existence of the homestead estate.

Qualification to Request No. 1.

The court gave request No. 1, and further stated: "As I have already charged you, if Long was discharged in bankruptcy,
53 that discharged him from the note. Yet the deed might be foreclosed as a mortgage if it was given to disencumber

the property, and if you believe that was the inducement held out to compl't to loan the money, in that event you will remember the charge already given on that subject. If you find for complainant, and find that there was usury in the note, you should calculate interest on the amount of money loaned from the date of the loan to the maturity of the note, and after that count interest at the rate of 10%, that being the rate stipulated in the note. The court gave the request marked No. 4, together with the qualification as stated by the reporter. The court gave request No. 5 with the qualification as stated by the reporter.

The court is respectfully requested to charge:

1st. If the evidence shows that the property embraced in the deed by Long & wife to Bullard was about to be sold under a mortgage, *fi. fa.*, issuing from a judgment of foreclosure, founded on a mortgage on the same property, executed by Mr. Long on the 14th day of April, 1868, & the note & deed of the compl't, Bullard, were
54 made for money by Long & wife to pay off said mortgage, *fi. fa.*, & Bullard was induced by Long and wife to lend them the money for that purpose, then Bullard is entitled to a verdict for the amount he lent, with lawful interest thereon from the maturity of the note sued on.

2nd. If complainant is entitled to recover under the instructions given, he is entitled to recover reasonable counsel fees also—such as have been proven to be reasonable.

3rd. If Bullard was induced by Long & wife to lend them money for the purpose of paying off an incumbrance on the property, created by a mortgage executed by Long on the 14th day of April, 1868, and he did lend them the money for the purpose, he is entitled to recover the amount actually lent, with lawful interest from the maturity of the note, & such reasonable counsel fees as has been proven.

4th. It does not effect Bullard's right to recover whether Mrs. Long knew the contracts of the note & deed when she signed
55 them or not, unless Bullard knew before or at the time he accepted said note & deed that she signed them in ignorance of their contents.

5th. Long's discharge in bankruptcy will not prevent Bullard from recovering if he lent defendants the money, at their solicitation, to relieve the property from an encumbrance created on the 14th day of April, 1868.

6th. If Bullard lent Long & wife the money, but not for the special purpose of paying off an encumbrance on the property, still he is entitled to recover so much of the amount lent as was actually applied to relieving the property from an encumbrance made by Long on April 14th, 1868, with interest and counsel fees.

Defendants request the court to charge—

1st. That a perfect equity cannot arise under a contract utterly void by law, & therefore if you believe from the evidence that the deed by Long & his wife to Bullard was usurious—that is, was tainted with usury—it was void under the law as title, and
56 no equity can accrue to Bullard under it.

Charge of Judge J. D. Stewart.

DAN'L BULLARD & WIFE
vs.
F. M. LONG & WIFE. } In Equity.

GENTLEMEN OF THE JURY: In this, as in all other cases in court' the jury have nothing to do with the parties, nor with making contracts for them. Your duty is simply to enforce contracts that the law allows or justifies, entirely irrespective of who the parties may be, & entirely irrespective of what the consequences of that enforcement may be, of such contracts that are legal and binding, and you should know nothing of the case or the parties but what you have learned from the pleadings or the evidence produced in court & admitted by the court, & according to the law You make up
57 your verdict according to that evidence and the law which is given you in charge by the court. If the court makes a mistake, you are bound by the law as given you, and that mistake can be rectified. Of the evidence and facts in the case, you are the exclusive judges, and it is not my purpose or intention to intimate what that evidence is or what has or has not been proved; but of the evidence you are the exclusive judges. (Here the court read from his written charge, and then said): These are in substance the pleadings; they are not evidence, except as to such parts as I will call your attention to; they make up the issues in the case that you are trying, and that it was made to disencumber the property from a valid lien on the same, and that you should find a decree that the property be sold, & a sufficiency of the amount applied to the payment of the note sued on. I am requested to charge by def'ts: ("If the evidence shows that the property embraced in the deed by Long & wife to Bullard," &c.)
58 I give you that with this qualification as I have already charged you. If Long was discharged in bankruptcy, that discharged him from that note, yet that mortgage might be foreclosed if it was given to disencumber this property, and if you believe that was the inducement held out to complainant to loan the money, then remember what I have already charged you. ("If complainant is entitled to recover, he is entitled to recover counsel fees.") I charge you that, if you find for compl't, your calculation would [be], if you find usury in the note, to take the principal loaned, & count 7 per cent. to the maturity of the note, and after that 10 per cent., if you find in the note that it was so stipulated, that it should bear 10 per cent. interest.

4th request. (It does not affect Bullard's right to recover, whether Mrs. Long knew, &c.) I give you that with the qualification that if she signed the paper she would be presumed to know what was in it. In my general charge I have explained that to you. If Mrs. Long had nothing to do with this money, but her husband
59 used it alone for his own purpose, and not to disencumber this property, if Mrs. Long signed the paper merely as security for her husband, that would not bind her, although she knowingly signed it.

(5th request. "Long's discharge in bankruptcy would not prevent," &c.) I qualify this by saying: Long's discharge in bankruptcy would discharge him from the note if it was an ordinary borrowing of money, but it would not discharge him from the lien of the mortgage, and it might be enforced against the homestead if it was used to relieve the homestead. It might be foreclosed as a mortgage, subject to the rights of a homestead. If the money was not used to relieve encumbrance, as I have already stated, I hold that the discharge in bankruptcy would discharge him from the liability on the note as a lien against borrowing money, but not from the lien of the mortgage, and that might be enforced, notwithstanding there might be usury in the note. The paper is void as a title, but you could not find that the property — be sold, unless it was Mrs.
60 Long's contract, or she got the benefit of the money used to disencumber the homestead. All these are facts that you must determine from the evidence.

(I am requested to charge: "A perfect equity cannot issue under a contract utterly void by law," &c.) I have already stated to you that I hold the law to be that that paper is void as a title if it contains usury, but it would still be a mortgage under the law, & might be enforced and foreclosed against the homestead or not, as you find for what purpose this money was used, or the consideration that induced this party to loan the money, whether to disencumber the property or for other purposes. As to all these matters you must judge & decide alone from the evidence, by testimony of witness, & other evidence admitted by the court. I don't mean to intimate that any fact has or has not been proven. If you find from the evidence and are satisfied reasonably that this money was borrowed to disencumber the homestead from a lien of the Loan Association held before
61 the constitution of 1868, or that the money was then used, & that was the inducement to make the loan, I charge you that in this case you should find a decree for the amount of money loaned, with legal interest, & find a decree that the property be sold & the proceeds applied to the discharge of this claim, and the excess to go to Long & wife. If you find that the money was simply a loan, not to relieve the homestead, but he took security on that loan; i- you believe that to be the true state of the case, and this transaction is tainted with usury, it is void as a deed, but is still a mortgage on the property, and you should so find, and you may still find that the mortgage could be foreclosed. If you find for compl'ts, you should say for how many dollars principal, with interest, as I have already explained to you, and that property be sold and the proceeds applied to the payment of this claim and balance paid to Mr. & Mrs. Long; but if you find that this was a mere loan of money, as I have explained, & not to relieve the homestead,
62 then your verdict should be for defendants. Take the papers and give the whole matter a patient, faithful investigation, and whatever you find the truth to be, say by your verdict.

We, the jury, find for complainant, and that he have a decree rendered, authorizing him to proceed to advertise & sell the property described to satisfy the following claim: ($1,000.40) one thou-

sand dollars & forty cents principal, ($820.03) & eight hundred and twenty dollars & three cents, interest for 8 years, 2 months, and 11 days, at 10 per cent., a .d ($200.00) two hundred dollars attorney's fees. Total, two thousand ($2,020.43) and twenty dollars and forty-three cents.

Jan'y 29th, 1881.

J. C. BANNON, *Foreman.*

63 *Bill, &c.*

Bibb Superior Court, at Oct. Adj'u'd Term, 1880.

DANIEL BULLARD
vs.
FRANCIS M. LONG & BETSEY A. LONG.

Whereupon it is considered, adjudged, & decreed by the court that the verdict & findings of the jury in the above-stated case be, and is hereby, made the judgment & decree of this court in said case; that compl't, Daniel Bullard, do recover of said def'ts, Francis M. Long and Betsey A. Long, the sum of one thousand dollars & forty cents, principal, eight hundred and twenty dollars & three cents as interest thereon, at the rate of ten per cent. per annum to date of this decree, & two hundred dollars for attorney's fees, and —— costs of suit, to be taxed by the clerk, to be made by a sale of the property described in said bill, to wit: *to wit:* That parcel of land in the city of Macon, in said county & State, & being, according to the plan of said city, parts of lots Nos. five & six (5 & 6,) in square number (90,) fronting on Oak ninety-one feet and nine inches
64 (91–9), and running back the same width; one hundred and fifty-one feet & four inches (151–4), bounded on the east by a ten-foot alley, & being that part of what was formerly known as the Southwestern Hotel lot, lying immediately on said alley, said property to be sold by the sheriff after due advertisement, and the proceeds of sale to be applied first to the payment of the several sums of money aforesaid, or so much thereof as the proceeds will pay, and if there is any excess the same to be paid by the sheriff to the said defendants, to be used towards purchasing another homestead.

Decree signed this 1st day of Feb'y, 1881.

T. J. SIMMONS,
J. S. C. M. C.

LANIER & ANDERSON,
Compl't's Sol's.

Am'is decreed.

Principal	1,000 40
Int. to date of decree	820 03
Attorney's fees	200 00
Costs	

64½ Bibb Superior Court. April Term, 1882.

Conformably to the terms of the judgment of the supreme court, as shown in the remitter in the case of Daniel Bullard *vs.* Francis M. Long & wife, this day ordered to be entered on the minutes of Bibb superior court, the said Daniel Bullard hereby writes off and remits from the foregoing judgment the sum of three hundred dollars from the principal sum of one thousand dollars therein stated, and also all interest calculated or accruing on the said sum of three hundred dollars.

This April 27th, 1882.

LANIER & ANDERSON,
Sol's for Daniel Bullard.

64¾ *Bill in Bibb Superior Court, Oct. Adj'd Term,* 1880, *& Verdict for Complainant.*

DANIEL BULLARD *vs.* FRANCIS M. LONG & WIFE.

And now comes the defendant at the said term of court and move the court for a new trial in said case on the following grounds, to wit:

1st. Because said verdict is contrary to law and contrary to the evidence, and strongly against the weight of evidence, is without evidence to sustain it, and is against the principles of equity.

2d. Because the court erred in overruling def'ts objection to the admission in evidence of the B. & L. mortgage & *fi. fa.* made upon the ground that there was no priority between Bullard and the B. & L. Association & in admitting said mortgage & *fi. fa.* in evidence.

3d. Because the court erred in charging the jury at compl't's request as follows: "If the evidence shows that the property
65 embraced in the deed by Long & wife to Bullard was about to be sold under a mortgage *fi. fa.* issued from a judgment of foreclosure founded on a mortgage on the same property executed by Long on the 14th day of April, & the note & deed of complaint Bullard were made for money borrowed by Long & wife to pay off said mortgage *fi. fa.*, and Bullard was induced by Long & wife to lend them the money for that purpose, then Bullard is entitled to a verdict for the amount he lent with lawful interest thereon from the maturity of said note."

4th. Because the court erred in charging the jury at compl't's request, as follows: If compl't Bullard is entitled to recover under the instructions given, he is entitled to recover reasonable counsel fees also—such as have been proven to be reasonable.

5th. Because the court erred in charging the jury at compl't's request as follows: "If Bullard was induced by Long & wife
66 to lend them money for the purpose of paying off an encumbrance on the property created by a mortgage executed by Long on the 14th day of April, 1868, and he did lend them the money for that purpose, he is entitled to recover the amount, with lawful interest from the maturity of the note sued on, & such reasonable counsel fees as have been proven."

6th. Because the court erred in charging the jury, at compl't's request, as follows: "It does not affect Bullard's right to recover, whether Mrs. Long knew the contents of the note & deed when she signed them or not, unless Bullard knew before or at the time he accepted said note & deed that she signed them in ignorance of their contents," &c.

7th. Because the court erred in charging the jury, at compl't's request, as follows: "Long's discharge in bankruptcy will not prevent Bullard from recovering, if he lent the money to defendants, at their solicitation, to relieve the property from an encumbrance
67 created on the 14th day of April, 1868, with the following qualifications, which was also error." Long's discharge in bankruptcy would discharge him from the note, if it was an ordinary borrowing of money, but it would not discharge him from the lien of the mortgage, & it might be enforced against the homestead if it was used to relieve the homestead. It might be foreclosed as a mortgage, subject to the right of a homestead, if the money was not used to relieve encumbrance, as I have already stated. I hold that the discharge in bankruptcy would discharge him from the liability on the note as a lien against borrowed money, but not from the lien of the mortgage, & that might be enforced notwithstanding there might be usury in the note. The paper is void as title, but you could not find that the property be sold unless it was Mrs. Long's contract, or she got the benefit of the money used to disencumber the homestead. All these are facts that you must determine, &c.

8th. Because the court erred in charging the jury, at com-
68 pl't's request, as follows: "If Bullard lent Long & wife the money, but not for the special purpose of paying off an encumbrance on the property, still he is entitled to recover so much of the amount lent as was actually applied to relieving the property from an encumbrance made by Long on April 14th, 1868, with interest & counsel fees."

9th. Because of the charging as follows: "And I further charge you that should you find from the evidence that def't Long borrowed money from compl't & gave a note, either individually or jointly with his wife, & that Long & wife jointly gave a deed to secure the payment of the note, and should you find that there was usury in the contract, & that subsequently Long filed a petition in bankruptcy & was discharged by the bankrupt court, then I charge you that he was discharged from all legal liability to pay the note sued on, & that no judgment could be obtained against him on the note."

The judge added thereto the following, which was error: "But I charge you if you find that Long was discharged in bank-
69 ruptcy from the payment of the note, & the deed was affected & tainted with usury, yet the deed might be foreclosed as a mortgage—that is, compl't could have a decree against the property for the amount of the debt evidenced by the note and the amount stated in the deed, & I further charge you in this connection that while usury would make void the deed as title, yet the same would be good as a mortgage, & the bankruptcy of Long would not discharge

the mortgage lien in this case, & the same could be foreclosed under this bill."

10th. Because the court erred in charging the jury as follows: "If there is no usury in this contract—that is, the contract sued on—then compl't would be entitled as against Long to have a decree that the property be sold and the proceeds be applied to the payment of the note sued on, and complainant would be entitled to such a decree, notwithstanding the bankrupt discharge of def't Long, unless for other reasons to which your attention will be called."

11th Because the court erred after charging the jury as
70 follows: "In this case the def'ts say that the money for which the note was given was borrowed by Long, & that his wife signed with him but received *not* part of the consideration either in receiving part or all of the money or in having the encumbrance removed from the homestead. I charge you that should you find this to be true, then you cannot find a decree against Mrs. Long, and cannot find that any decree you may grant under the rules of law I have given you foreclosing the paper sued on as a mortgage could sell the property during the existence of the homestead estate of Mrs. Long & her children" by adding thereto the following, which was error, viz: "But should you find that Mrs. Long did receive the money for which the note was given, or that the same was applied for the use & benefit of the homestead property, then you should find a decree that the property be sold and the proceeds, or a sufficient amount therefore, be applied to the payment of the note sued on."

12th. Because the court erred in charging the jury as follows: It
71 is claimed by compl't in this case that the money borrowed by Long was procured with the understanding & for the purpose of paying off a *fi. fa.* then against the property in controversy, & that the lien of the *fi. fa.* was superior to the lien to the homestead of Mrs. Long. As to this, I charge you that if the B. & L. Association had a judgment against Long which was obtained upon a contract dated before July, 1868, then the *fi. fa.* & judgment obtained on such contract would be a superior lien to the claim of a homestead under the constitution of 1868, and such *fi. fa.* and judgment would be an encumbrance on a homestead subsequently taken on the property in question, and if the evidence show that the *fi. fa.* was about to be enforced by the levy and sale of the property, & for the purpose of preventing such sale, & for the purpose of taking up said *fi. fa.* & judgment, compl't loaned the money sued for to the def't with that purpose & understanding, and if def't & his wife
72 gave a note & mortgage or deed for the securing the money thus obtained, then I charge you that such note & mortgage or deed thus taken would be a debt made for [the] purpose of removing an encumbrance from a homestead, & in that event you should find a decree subjecting the property.

13th. Because the court erred in charging the jury as follows: "I have already stated to you that I hold the law to be that the paper is void as a title if it contains usury, but it still would be good as a mortgage."

14th. Because the court erred in charging the jury as follows: If you find from the evidence, and are reasonably satisfied that this money was borrowed to disencumber the homestead from a lien of the Building & Loan Association, held before the constitution of 1868, & that the money was thus used, & that was the inducement to make the loan, I charge you that in this case you should find a decree for the amount of money loaned, with legal interest, & fine a decree that the property be sold, and the proceeds applied to the
73 discharge of this claim, & the excess to go to Long and wife.

15th. "Because the court erred in charging the jury as follows: If you find for the compl't, your calculation will be, if you find usury in the note, to take the principal loan and count 7 per cent. to the maturity of the note, & after that 10 per cent. if you find in the note that it was so stipulated that it should bear 10 per cent. int."

16th. Because the verdict of the jury is contrary to the following charge of the court: "I charge you that the paper as a mortgage is void, as a deed would not create a lien of higher dignity than the homestead, & therefore should you find a decree foreclosing the same, such decree should provide that said property should not be sold under the same during the existence of the homestead estate of Mrs. Long & children.

17th. Because the verdict of the jury is contrary to the following charge of the court: "Should you find from the evidence that compl't was not induced to loan the money for the purpose of taking
74 up & satisfying a judgment or other lien against def't, but that the money was loaned by complainant, he taking a note & deed to secure the same without reference to what was to be done with the money—then I charge you that the note and deed does not create a lien superior to the homestead, and in that event, should you find a decree foreclosing the paper as a mortgage, you should not find that the property be sold during the homestead estate."

Wherefore respondents move the court to set aside said verdict and grant them a new trial.

LYON & GRESHAM,
SAM'L H. JEMISON,
Sol's for Resp'd'ts.

Minutes, page 374. Feb'y 10th, 1881.

It is agreed by counsel for both compl't & respond'ts, and ordered by the court, that the hearing of the above motion and the approval of the grounds thereof be heard in the city of Griffin, Ga., on Saturday, the 19th day of Feb'y inst., or such other time, either
75 in term time or vacation, as may be agreed upon by counsel; or, upon failure by them to agree, such time to be appointed by the judge, said motion having been made & filed, together with the brief of evidence agreed on by counsel and approved by the court at & during the term of court at which said case was tried.

In open court Feb'y 10th, 1881.

JOHN D. STEWART,
Judge S. C. F. C.

The within grounds of the motion for new trial are this day examined in pursuance of the above order, & approved as true when taken together with the general charge in said case, which the clerk is hereby required to send up as part of the record in the case.

In open court this 29th day of April, 1881.

JOHN D. STEWART,
Judge S. C. F. C.

Ordered, that counsel in the within case have 30 days within which to file brief, and that at the expiration of that time the judge shall decide the motion upon such briefs as have then been filed, whether in term time or vacation, with the right to either party to except.

April 29th, 1881. In open court.

J. D. STEWART,
Judge S. C. F. C.

76 [Endorsed:] Daniel Bullard *vs.* Francis M. Long & wife. Motion for a new trial. Filed in office Feb'y 5th, 1881. A. B. Ross, clerk. Lyon & Gresham. Sam'l H. Jemison.

77 *Bill, &c., in Bibb Superior Court & Verdict for Compl't, Oct. Adj'd Term*, 1880.

DANIEL BULLARD *vs.* FRANCIS M. LONG & WIFE.

Brief of Evidence.

The following is a brief of the oral & copy of the written evidence had on the trial of the above-stated case. Complainant introduced & read to the jury note of Long & wife to Bullard & deed made to secure the payment of the same, as follows:

$1,220.00. MACON, GA., *Nov. 18th*, 1872.

Twelve months after date, we, or either of us, promise to pay Daniel Bullard, or bearer, twelve hundred & twenty dollars, for value received; if not paid promptly at maturity, this note to bear interest from its date, at the rate of ten per cent. per annum, and we are also to pay all costs & counsel fees incurred by said Bullard, or his transferees, in collecting this note.

(Signed) F. M. LONG.
B. A. LONG.

78 EXHIBIT "B."

GEORGIA, *Bibb County:*

This indenture, made the eleventh day of November, in the year of our Lord one thousand eight hundred & seventy-two, between Francis M. Long & his wife, Betsey Ann Long, of the county of Bibb, of the one part, and Daniel Bullard, of the county of Twiggs, of the other part, witnesseth: That the said party of the first part, for and in consideration of the sum of eleven hundred & eighty dollars, in hand paid, at and before the sealing & delivery of these presents,

the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, conveyed, & confirmed, & by these presents do grant, bargain, sell, alien, convey, & confirm, unto the said Daniel Bullard, his heirs & assigns, all those parcels of land situate in the city of Macon, in said county & State, & known in the plan of the city as parts of lots numbers five & six (5 & 6), in square No. ninety (90), fronting on Oak street ninety-one feet & nine inches, & running back the same width one hundred & fifty-one feet & four inches, and
79 bounded on the east by a ten-foot alley, & in the rear by a lot in possession of David M. Smith, and known as part of the Southwestern Hotel lot, & that part lying immediately on the ten-foot alley as aforesaid (the same being property set apart as a homestead for the family of said Long, & now conveyed by the approval of the ordinary of said Bibb county), to have and to hold the said bargained premises, with all and singular the rights, numbers, and appurtenances thereunto appertaining, to the only proper use, benefit, and behoof of him, the said Daniel Bullard, his heirs, executors, administrators, & assigns, in fee simple, and the said Long and wife, the said bargained premises, unto the said Daniel Bullard, his heirs, executors, administrators, and assigns, against the said Long & wife, their heirs, executors, & administrators, and against all & every person or persons, shall & will warrant & forever defend by virtue of these presents.

In witness whereof the said parties of the first part have hereunto set their hand and affixed their seal & delivered these presents the day & year first above written.

F. M. LONG. [L. S.]
B. A. LONG. [L. S.]

Signed, sealed, & delivered in presence of us.
J. P. NEEL.
A. B. ROSS,
D. Clerk Superior Court.

80 Compl't then introduced the following petition, rule, & foreclosure, which was permitted to be read to the jury over the objections of def'ts' counsel, viz.:

STATE OF GEORGIA, *County of Bibb:*

To the superior court of said county, Oct. term, 1870:

The petition of the Ocmulgee Building & Loan Association shows that heretofore, to wit, on the 14th day of April, in the year 1868, Francis M. Long, of said county, made & delivered to your petitioner his certain instrument in writing called a bond or obligation, whereby, on the day and year aforesaid, he bound himself, his heirs, executors, & administrators, under his bond & seal, in consideration of so much money that day advanced to him by said association on 17 shares of stock which he then held in said association under the charter & by-laws thereof, to pay to your petitioner, his successors in office, & assigns, the sum of $3,400.00 *dollars*, conditioned that he, the said Long, his heirs, executors, & administrators, shall well and

truly pay to the said association, so long as it shall continue to exist, the sum of seventeen dollars monthly, on its regular day of meeting (which your petitioner avers was on the second Monday
81 in each month, & (still is) being installments due on said stock on which said advance was procured; the further sum of $17 monthly as aforesaid on the same day, as interest on said advance; then said bond or obligation to be void, otherwise of full effect; and for the better securing the payment of the said installments & interest as aforesaid (& the said sum advanced), as well as in consideration of five dollars paid him by said association, said Long executed & delivered, on the day & year aforesaid, to petitioner his certain deed of mortgage, conveying to your petitioner *his certain deed of mortgage, conveying to your petitioner* all that tract or parcel of land situate, lying, & being in the city of Macon, in said city, parts of lots five & six (5 & 6), in square No. ninety (90), fronting on Oak street ninety-one feet nine inches (91 feet 9 in.), & running back the same width one hundred & fifty-one feet four inches (151 ft. 4 in), bounded on the east by a ten-foot alley, & being that part [which] was formerly known as the Southwestern Hotel lot, which lies immediately on said alley. Conditions to be
82 void on the payment of the installments & interest as aforesaid, according to the tenor and true intent and meaning of said bond of said Long, & in accordance with the charter & by-laws of the said association (which bond & deed of mortgage are here in court to be shown), and your petitioner avers that, according to the 14th section of the charter of said association, then and now in force, should any stockholder, having received any portion of his or her stock in advance, neglect or refuse to pay any or all of his or her dues to the association for three successive months, they, the directors, may compel payment of principal & interest by instituting proceedings on the bond & mortgage according to law. Yet your petitioner avers that the said Long, although so indebted, & to pay said sums of money in said bonds & mortgage mentioned, often requested, has not paid the same, but has failed & refused to pay said installments & interest as aforesaid to petitioners, & yet fails
83 and refuses to pay the same; therefore your petitioner prays that such rule or order may be made and passed by the court as accord with the statute in such cases made & provided, and with the constitution & by-laws of said association, & that said Long be ordered to pay into the court by the first day of the next term thereof the principal, interest, & costs due on said bond, or in default the said mortgage be closed, & the equity of redemption thereon be forever barred.

LANIER & ANDERSON,
Pet's Att'ys.

the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, conveyed, & confirmed, & by these presents do grant, bargain, sell, alien, convey, & confirm, unto the said Daniel Bullard, his heirs & assigns, all those parcels of land situate in the city of Macon, in said county & State, & known in the plan of the city as parts of lots numbers five & six (5 & 6), in square No. ninety (90), fronting on Oak street ninety-one feet & nine inches, & running back the same width one hundred & fifty-one feet & four inches, and
79 bounded on the east by a ten-foot alley, & in the rear by a lot in possession of David M. Smith, and known as part of the Southwestern Hotel lot, & that part lying immediately on the ten-foot alley as aforesaid (the same being property set apart as a homestead for the family of said Long, & now conveyed by the approval of the ordinary of said Bibb county), to have and to hold the said bargained premises, with all and singular the rights, numbers, and appurtenances thereunto appertaining, to the only proper use, benefit, and behoof of him, the said Daniel Bullard, his heirs, executors, administrators, & assigns, in fee simple, and the said Long and wife, the said bargained premises, unto the said Daniel Bullard, his heirs, executors, administrators, and assigns, against the said Long & wife, their heirs, executors, & administrators, and against all & every person or persons, shall & will warrant & forever defend by virtue of these presents.

In witness whereof the said parties of the first part have hereunto set their hand and affixed their seal & delivered these presents the day & year first above written.

F. M. LONG. [L. S.]
B. A. LONG. [L. S.]

Signed, sealed, & delivered in presence of us.
J. P. NEEL.
A. B. ROSS,
D. Clerk Superior Court.

80 Compl't then introduced the following petition, rule, & foreclosure, which was permitted to be read to the jury over the objections of def'ts' counsel, viz.:

STATE OF GEORGIA, *County of Bibb:*

To the superior court of said county, Oct. term, 1870:

The petition of the Ocmulgee Building & Loan Association shows that heretofore, to wit, on the 14th day of April, in the year 1868, Francis M. Long, of said county, made & delivered to your petitioner his certain instrument in writing called a bond or obligation, whereby, on the day and year aforesaid, he bound himself, his heirs, executors, & administrators, under his bond & seal, in consideration of so much money that day advanced to him by said association on 17 shares of stock which he then held in said association under the charter & by-laws thereof, to pay to your petitioner, his successors in office, & assigns, the sum of $3,400.00 *dollars*, conditioned that he, the said Long, his heirs, executors, & administrators, shall well and

truly pay to the said association, so long as it shall continue to exist, the sum of seventeen dollars monthly, on its regular day of meeting (which your petitioner avers was on the second Monday
81 in each month, & (still is) being installments due on said stock on which said advance was procured; the further sum of $17 monthly as aforesaid on the same day, as interest on said advance; then said bond or obligation to be void, otherwise of full effect; and for the better securing the payment of the said installments & interest as aforesaid (& the said sum advanced), as well as in consideration of five dollars paid him by said association, said Long executed & delivered, on the day & year aforesaid, to petitioner his certain deed of mortgage, conveying to your petitioner *his certain deed of mortgage, conveying to your petitioner* all that tract or parcel of land situate, lying, & being in the city of Macon, in said city, parts of lots five & six (5 & 6), in square No. ninety (90), fronting on Oak street ninety-one feet nine inches (91 feet 9 in.), & running back the same width one hundred & fifty-one feet four inches (151 ft. 4 in), bounded on the east by a ten-foot alley, & being that part [which] was formerly known as the Southwestern Hotel lot, which lies immediately on said alley. Conditions to be
82 void on the payment of the installments & interest as aforesaid, according to the tenor and true intent and meaning of said bond of said Long, & in accordance with the charter & by-laws of the said association (which bond & deed of mortgage are here in court to be shown), and your petitioner avers that, according to the 14th section of the charter of said association, then and now in force, should any stockholder, having received any portion of his or her stock in advance, neglect or refuse to pay any or all of his or her dues to the association for three successive months, they, the directors, may compel payment of principal & interest by instituting proceedings on the bond & mortgage according to law. Yet your petitioner avers that the said Long, although so indebted, & to pay said sums of money in said bonds & mortgage mentioned, often requested, has not paid the same, but has failed & refused to pay said installments & interest as aforesaid to petitioners, & yet fails
83 and refuses to pay the same; therefore your petitioner prays that such rule or order may be made and passed by the court as accord with the statute in such cases made & provided, and with the constitution & by-laws of said association, & that said Long be ordered to pay into the court by the first day of the next term thereof the principal, interest, & costs due on said bond, or in default the said mortgage be closed, & the equity of redemption thereon be forever barred.

LANIER & ANDERSON,
Pet's Att'ys.

Petition & Rule nisi to Foreclose Mortgage.

Bibb Superior Court. Oct. Term, 1870.

THE OCMULGEE BUILDING & LOAN ASSOCIATION
vs.
FRANCIS M. LONG.

Present: The Hon. C. B. Cole, judge of said court.

It appearing to the court by the petition of the Ocmulgee Building & Loan Association that heretofore, to wit, on the 14th day of April, in the year 1868, Francis M. Long, of said county, made & delivered to the said petitioner his certain bond or obligation,
84 whereby he bound himself (under his bond and seal), his heirs, executors, & administrators, upon the conditions therein mentioned (& which are fully set forth in the foregoing petition, to which reference is here made), to pay to your petitioners the just and full sum of $3,400 advanced to him by said association on that day, conditioned that if he, his heirs, executors, or administrators, should pay to said association, so long as it should continue to exist, on its regular day of meeting (being the 2nd Wednesday, as averred, in each month), the sum of $17 monthly, as installments on seventeen shares of stock then held by him in said association, on which said advance was procured; the further sum of $17 monthly on the same day, as interest on said advance; then said bond to be void, all of which is more fully set forth in said foregoing petition. And that afterwards, on the day and year aforesaid, the said Long, the better to secure the payment of said installments, & interest, as aforesaid (as well as the said sum advanced), & in consideration of five dollars to him paid by said association, executed and delivered on the day & year aforesaid, to
85 the said petitioner, his certain deed of mortgage conveying to him the parcel or tract of land fully set forth & described in said foregoing petition (to which reference is here made); condition to be void upon the payment of the installments & interest as aforesaid, according to the tenor & true intent & meaning of his bond, & in accordance with the charter & by-laws of said association, and it being averred by said petitioner that, according to the 14th section of the charter of said ass-ciation (then and now in force), "should any stockholder, having received any portion of his or her stock in advance, neglect or refuse to pay any or all of his dues to the association for three consecutive months, then the directors may compel the payment of principal & interest by instituting proceedings on the bond & mortgage, according to law." And it further appearing that the said Long has failed to or refused for more than three consecutive months next preceeding said petition to pay the installments and interest as aforesaid, although often requested so to do, & that he still fails & refuses so to do: It is therefore ordered
86 that the said Francis M. Long do pay into court, by the first day of the next term thereof, the principal & interest & installments, as well as all costs due on said bond or obligation, &

secured by said mortgage (or show cause to the contrary if any he has), and that on the failure of said Long so to do the equity of redemption in and to said mortgaged premises be forever thereafter barred and foreclosed. And it is further ordered that a copy of this rule & of the foregoing petition *he* serves on the said Long, or his special agent or att'y, at least three months previous to the next term of this court.

THE OCMULGEE BUILDING & LOAN ASSOCIATION
vs.
FRANCIS M. LONG.

Whereas at the Oct. term, 1870, of this court, a rule *nisi* in the above case was granted, requiring defendant to pay to said Building & Loan Association the principal, interest & installments, and all costs & expenses due on a certain bond or obligation given by the def't on the 14th day of April, 1868, whereby he bound himself, his heirs, executors & administrators, under his hand & seal,
and in consideration of so much money that day advanced
87 to him by said association under the constitution & by-laws
thereof, to pay the said association as aforesaid the sum of $3,400; conditioned that if said def't, his heirs, executors, & administrators should pay to said association, so long as it should continue to exist, the sum of $17 monthly, on its regular day of meeting, (being the 2d Wednesday in each month,) being installments due on said stock on which said advance was procured, and the further sum of $17 monthly, aforesaid, on the same day, as interest on said advance, then said bond or obligation to be void, otherwise of full effect. For the better securing the faithful performance of the obligation of which said bond, as well as in consideration of $5.00 paid him by said association, defendant had executed on the same day & year aforesaid to the association, as aforesaid, his deed of mortgage, conveying to said association, as aforesaid, parts of lots No. five & six (5 & 6), in square No. ninety (90), fronting on Oak St. ninety-one feet nine inches (91 ft. 9 in.), running back the same width one hundred & fifty-one feet four inches (151 ft. 4 in.),
bounded on the east by a ten-foot alley, & being that part of
88 what was formerly known as the Southwestern Hotel lot,
which lies immediately on said 10-foot alley; conditioned to be void upon the payment of the installments & interest as aforesaid, according to the tenor & true intent & meaning of said bond, & in accordance with the constitution & by-laws of said association, (or show cause to the contrary,) and it appearing that a copy of said rule *nisi* has been duly served on said defendant personally, & that said def't yet neglects and refuses to pay the amount due on said bond or obligation, and had at the time of the granting of said rule *nisi* neglected & refused theretofore for three successive months to pay his dues, or any part thereof, to said association, & from thence hitherto has neglected & refused so to do, or to comply in any respect with the constitution & by-laws of said association in the premises.

It is therefore considered and adjudged by the court that the equity of redemption in & to said mortgaged premises be, and the same is hereby, barred & forever foreclosed; and it is further ordered & adjudged that the plaintiff, the Ocmulgee Building & Loan Association, do recover of said defendant, Francis M. Long, the
89 sum of $2,074.90, principal, & the sum of —— dollars and —— cents for cost of suit, & that execution do issue against the mortgaged premises for the sum aforesaid, & that the defendant in mercy—

Judgment signed this 5th day of May, 1871.

C. B. COLE,
Judge S. C., Macon Ct.

STATE OF GEORGIA, *Bibb County:*

To all and singular, the sheriff of said State, Greeting:

We command you that of the lands & tenements of Francis M. Long, to wit, parts of lots numbers five & six (5 & 6), in square number ninety (90), fronting on Oak street ninety-one feet (91 ft.) nine inches (9 in.), & running back the same width one hundred & fifty-one feet four inches (151 ft. 4 in.), bounded on the east by a ten-foot alley, & being that part of what was formerly known as the Southwestern Hotel lot, which lies immediately on said ten-foot alley, you cause to be made the sum of two thousand & sixty-four dollars and ninety cents, principal, & the further sum of
90 seventy-seven dollars & sixty-cents, for interest up to the — day of May, 1871; and also the further sum [of] nine dollars and — cents for costs, with interest on the principal sum from the — day of May, 1871, which the Ocmulgee Building & Loan Association, at our superior court of said *court of said* county, to wit, on the — day of May, 1871, recovered against Francis M. Long & said described property for principal, interest, & costs: and that you have the several sums of money before the judge of said court on the fourth Monday in October next, to render to the said Ocmulgee Building & Loan Association the principal, interest, & costs aforesaid; & have you then & there this writ.

Witness the honorable C. B. Cole, judge of said court, this 5th day of June, 1871.

A. B. ROSS, *D. Clerk.*

GEORGIA, *Bibb County:*

I have levied the within-described property this July 31st, 1871.

P. W. DOYLE, *Sheriff.*

91 Rec'd Aug. 14th, 1871, from F. M. Long two hundred dollars on within *fi. fa.*, $200.00

A. R. FREEMAN, *Treas.*

Received of A. R. Freeman, treas. Ocmulgee B. & Loan Association sixteen $\frac{55}{100}$ dollars in full of costs on this *fi. fa.*

Aug. 31st, 1871.

P. W. DOYLE, *Sheriff.*

Mortgage Fi. Fa.

OCMULGEE BUILDING & L. ASSOCIATION *vs.* FRANCIS M. LONG.

Mr. Ross will satisfy the above *fi. fa.* on the docket.
Nov. 18th, 1872.

LANIER & ANDERSON,
Pl'ff's Att'ys.

In Bibb Sup'r Court. In Equity.

DANIEL BULLARD *vs.* F. M. LONG & HIS WIFE.

Testimony.

92 (After reading the pleadings, bill, and answer, & introduction of note & mortgage *fi. fa.*, with entries thereon, &c.)

DANIEL BULLARD (sworn).

Ques. (Papers handed to witness.) Please examine that deed & note, & state what they were given for.

An-. I met Mr. Long on the street several times, & went to his house several times, & he told me before the money was loaned——

Ques. What was said by him or his wife at his house?

Ans. His wife said she was willing to sign that deed; he said the money was to settle with the Loan Association; they were about to sell him out. That was not a great while before the money was loaned. I suppose 2 or 3 weeks before.

Ques. What did Mr. Long say he wanted the money for?

Ans. To pay a debt the association had against him, or an execution or something of that sort.

(Objected to as irrelevant; "they cannot follow money," &c. Testimony admitted if it is part of *res jestor.*)

Ques. Please state what Mr. Long & wife said to you at their house about borrowing money, and what for?

93 Ans. They said it was to redeem the land they lived on. They kept at me and met me at your office & money was turned over to you to pay the Loan & Building Association, & the other part of it for something else. It was done at your office, (of Lanier & Anderson.)

Ques. Was that after the conversation at his house?

Ans. Yes; that was after I agreed to let them have the money for that purpose.

Ques. Was that the money that was the consideration of this note?

Ans. Yes. That was the money for that note.

Ques. Did you apply to Long to loan him money or did they apply to you?

Ans. They applied to me several times. They wanted me to go to their house. I went, and stayed there a night or two at their house. They had applied to me before that for the loan of money.

Ques. Was Mrs. Long present?

Ans. She was there about the house, and understood it all. She said she was willing to do anything he wanted her to do to get the money.

Ques. Was Mrs. Long present at the conversation about relieving the property?

94 Ans. Yes; she was there at home. I think they came to me a time or two, he did, & I went up there to his house. I saw both of them. Mr. Long first applied to me; after that I saw him & his wife. He stated the case to her.

Ques. Was the conversation with Long and his wife?

Ans. Both of them were there at home.

Ques. Answer my question. Was Mrs. Long present when you were talking about their getting the money?

Ans. She was present; yes. She was there at home present.

Ques. Did she hear the conversation?

Ans. They told her in my presence what occurred, and what it was for. After that I loaned the money. I loaned it to pay up their debt to the Building Association.

Ques. On that occasion, when you were at the house, did you agree to let them have the money?

Ans. Yes; under the conditions I complied.

Cross-examination:

Ques. Did you say Mrs. Long applied to you to borrow money?

Ans. Yes; he was first. I stated that awhile ago.

Ques. When was it that he applied to you for that purpose?

95 Ans. I don't know.

Ques. What was the security he proposed to give?

Ans. The deed to the land, and his wife agreed to it. I went to his house to stay all night.

Ques. When you were there at the house did you talk with Mrs. Long?

Ans. I talked with them all; yes, I talked with Mrs. Long & with him, & and he talked to her; he said a heap; I don't know what he did say he said so much.

Ques. How much money did you let him have?

Ans. I let him have all he asked for; I don't know how much exactly; it was more than a thousand dollars—I don't know how much.

Ques. Was it a thousand & fifty dollars?

Ans. I don't know what it came to on the note at ten per cent. interest; it was not 1½ per cent. interest per month; I never took more than legal interest.

Ques. How much money did you pay on that note?

Ans. I could not tell if I had to be hung.

Ques. Was it not $1,040?

Ans. I have answered you that I cannot tell; I did not let him have $1,220; I gave two checks, I think; I don't know where Mrs. Long went to get the money.

Ques. Did you give a check to Mrs. Long on Col. Lanier?

96 Ans. They went off with the check—Long did—and came back & paid it to Mr. Anderson, I think.

Ques. Did you give the check to Long?

Ans. They were in the house together.

Ques. How much did Long pay to Anderson?

Ans. I don't know what he paid to Anderson; I told you I did not know what he paid him.

Ques. Were you present when the deed was signed?

Ans. No, I don't think I was; he went off and brought it back; I did not see the deed executed.

Ques. After the deed was signed, then you gave Long a check?

Ans. Yes, I did.

Redirect examin-:

Ques. Did you ever prove this debt in the bankrupt court?

Ans. No, sir.

Ques. What did you mean when you said Mr. Long said so much you did not know what he did say?

(Objected to, & question withdrawn.)

Ques. What did Mr. & Mrs. Long say in the house about borrowing money, & for what purpose it was wanted.

Ans. He said they wanted to borrow money to relieve their land from incumbrance of the Loan & Building Association.

97 Ques. Did they both speak of it, or only one of them?

(Objection to the question. "Witness has repeatedly refused to state what Mrs. Long said." Question varied.)

Ques. Was the statement you heard made by both or only one?

Ans. By both of them; I asked if she was willing to sign the deed, & she said she was. I have stated that Mrs. Long said she was willing to sign the deed. That is all she said.

(In answer to Judge Anderson, witness said:) "That is all she said, at one time, but she said that 2 or 3 times as I sat and talked with them."

Ques. Was anything said between you & Mr. & Mrs. Long, about insurance?

Ans. Long was to keep the property insured at his expense. I don't know if he did or not. I never examined, & I did not keep up the insurance; he went & insured for my benefit; if he had not paid, I suppose they would have called on me to pay it. I have not paid anything on it.

Judge Lyon:

Ques. (By Judge Anderson:) What, in your opinion would be fair & reasonable fees for collecting a claim of this sort?

Ans. I cannot tell that very well till you have collected it.

98 If you should collect it, it would be worth at least $200. I should say, not less than $125, & if you should ever get the money, $200 would be a reasonable fee.

(Closed for compl't.)

Defense.

(Application for homestead, filed & granted Dec. 10, 1869, & other papers connected with homestead, Dec. 10, 1869; plat of homestead, with ordinary's approval Dec. 21st, & clerk's certificate of record, January 1st, 1870, embracing the premises in dispute. Discharge of F. M. Long in bankruptcy, 15th April, 1874; in evidence, over objection of compl't's counsel.)

Testimony of Mrs. B. A. Long, read under agreement of counsel from stenographic report on former trial.

(See Mrs. Long after.)

A. B. Ross (sworn).

Ques. Did you witness a deed made by Francis M. Long & B. A. Long to Dan'l Bullard in November, 1872.

Ans. Yes, sir; I did at Mrs. Long's house.

Ques. Were its contents read or stated to Mrs. Long?

Ans. No, sir; I did not know the contents of the deed myself, I think.

99 Ques. Why did you go there?

Ans. Mr. Long's son came to my house and requested me to come & witness a paper.

Ques. What, if anything, did Mr. Long say to Mrs. Long about signing?

Ans. Mrs. Long was not in the front room when I went in, but she came in from the dining room, I think.

Ques. Did he say anything to her when she came in?

(Objection to what Long said when compl't was not present. Objection overruled. "Anything said just before or at the signing is inadmissible.")

Ans. Mr. Long called his wife in, "Betsey Ann, come in & sign your death warrant." I think that was the expression he used. She came in from the dining room & sat down and signed the paper in — presence.

Ques. Who directed Mrs. Long where to sign?

Ans. I think I did.

Ques. Was Mr. Ward, the ordinary, there at the time?

Ans. No, sir. I did not know the contents of the paper; I don't think I read it. Mrs. Long was not made acquainted with the contents of it while I was there; I did not stay long enough there for it to be read over.

100 Cross-examination:

Ques. Was Mr. Bullard present?

Ans. No, sir,

Ques. Did you say Mr. Long called his wife Betsey Ann?

A. Yes; I think he said to her, "Come in and sign your death warrant."

Ques. Was not that said in a jocular way?

Ans. It seemed to be. I don't know if she had read the deed be-

fore I went there; I know nothing of that; she was just called in and signed it.

F. M. LONG (sworn):

Ques. (Paper handed to witness.) Is that the note for $1,220? Please state where that note was made, & what amount of money you got, and all the circumstances about it.

Ans. I made the note in Lanier & Anderson's office; it was written there by Col. Lanier.

Ques. How came you to make the note; what money you got on it; & state all the circumstances?

Ans. Well, I wanted to get some money, & I wrote to Mr. Bullard to come to Macon; I wanted to see him on business; he came & I told him what I wanted; he said very well, I could get it; he
101 asked how much I wanted; I said I did not know. I met him near the Brown House, & we sat down & I told him then the security I would give. He went on to state he had bills of sale on different people, mules, &c.

Ques. Tell about your own transaction with him.

Ans. I told him the property I proposed to make him security on; he then told me what sort of paper he wanted & would let me have as much as I wanted. There was a day set when we were to meet again. He came up again, & I told him how much money I wanted. I think they had the amount made out, with interest added, and they wrote the note & deed, probably, when I went to Lanier & Anderson's office, & there I signed those papers, for which he gave me a check for $1,000.40; we may have had some little words about interest; he sort of got off the handle then, and he handed it back to me. I gave it to Col. Lanier, & he handed it to me for $1,000.40.

Ques. How was it that he gave you no more than that?

Ans. He did not give me any more than that; that was the check he gave me for the note; he had counted the interest on the
102 note.

Ques. What did you do with the check?

Ans. I gave it to Col. Lanier; I don't know what he did with it.

Ques. Did you get anything from the proceeds of the check?

Ans. Next day Mr. Lanier gave me some money, I don't know how much exactly; he gave me all of $1,000.40, less 700 some dollars.

Ques. What was the $700 for?

Ans. For an execution or claim Lanier & Anderson had against me in favor of the Building & Loan Association. I don't know exactly the amount, but about $720, or $730.

Ques. What was the B. & L. Association mortgage for?

(Objected to. "There is higher evidence." Objection overruled.)

Ques. Who got the money you had over the $700?

Ans. Seymour & Johnson got it for goods, for merchandise.

Ques. Did Mrs. Long get the benefit of that money?

Ans. No; it never went across Cherry street.

Ques. Was any part of it used in the improvement of the homestead?

(Objected to; objection sustained.)

Ques. What did you do with the balance of the money you got from Col. Lanier, of the proceeds of that check?

Ans. I paid various of my little debts with it.

103 Ques. At the time you got this money from Mr. Bullard did you tell him what you were going to do with it?

Ans. Not at the time he agreed to let me have it.

Ques. Did you state anything to him as to what you intended to do with the money the day you got the check?

Ans. I told him what I wanted—what amount of money—& he remarked to me it was none of his business; he did not care anything about that. All he wanted was his papers fixed like he wanted them.

Ques. Did Mrs. Long get any of the $1,000.\frac{40}{100}$ or not?

Ans. No, sir; it did not go in payment of her debts. I don't suppose she ever owed a nickel in her life, except a washing bill, or something of that sort.

Ques. State the circumstances of the making and signing of papers by Mrs. Long, & if read over to her or not; what was said to her about the deed, & what she said, if she said anything.

Ans. Mr. Bullard was never inside my yard but 4 times in his life. The first time he went as a friend to *to* take dinner. I did not want or need any money then, & nothing was said about

104 money. The second time he went there with a brother of mine, and stayed all night with me. He and my brother sat up late that night talking religion.

Ques. Had he any conversation with Mrs. Long?

Ans. I don't know that he spoke to her.

Ques. Were any negotiations made with her about money?

Ans. None at all. The third time he came there, before I applied to him or any arrangements were made about it, I asked him to go there, and he went with me, & all I heard him say to my wife was: "I'm come to buy you out," & she said it could be made a very pretty place, or something of that sort.

Ques. What occurred when the papers were signed by Mrs. Long?

Ans. I think I had signed the papers the day before myself in town. I put them in my pocket & took them home. Mr. Ross came in, & Mrs. Long, & signed them. He only stayed a few minutes. I put them in my pocket and came down town. The contents of the papers were never read to my wife by me. She never had possession of them. The only time they were taken from my pocket was for Mr. Ross to witness & sign them. The fourth time

105 Mr. Bullard was at my house I was sick. My place was levied on; he had seen it in the papers. He came to my room and proffered to loan me money to take up the execution.

Ques. At the time of the application for homeste-d where were you?

Ans. I had a contract on the Griffin R. road; was at one of the

camps on the road; I was not in Macon at the time of application for homestead; I only came home once in a while; I might have been here during the time, but I was much opposed to the homestead at the time.

Ques. What was the consideration that you received for making that deed?

Ans. I got a bond for titles; I got $1,000\frac{40}{100}$ in money. The deed was made for that debt; both note & deed were made for the same purpose; the deed was made to secure the note; there was no other consideration for that deed but that note.

Cross-examined:

Ques. What use was made of the money you received over $700?

Ans. I gave it to H. Johnson—not for provisions; I was merchandizing—for various things; some for provisions in my
106 store to trade on. Mr. Bullard was at my house 4 times; one time he went there at my request to look at the place; we stayed there only a few minutes, & he said to Mrs. Long he was going to buy her out, & she said it could be made a very pretty place.

Ques. Did you ever tell her what the mortgage was given for?

Ans. I told her, I think, probably after the arrangement was made that I could borrow some money from Bullard by giving him a lease; I think, as well as I can recollect, she said: "Can't you get along without it?" I don't recollect what I said to her.

Ques. Did she know you were getting the money from Bullard before she signed the papers?

Ans. She knew only what I told her; I told her before I got the money.

Ques. Before Bullard agreed to let you have the money, did you tell him what you were going to do with it?

Ans. Yes; I told him that between Brown House & National Hotel; I told him I wanted the money to pay that debt to the Loan Association.

Ques. Did you say that in Lanier & Anderson's office?
107 When you got the check you turned it over to Col. Lanier?

Ans. Yes; he gave me the check & I turned it over to Col. Lanier.

Ques. You handed it to him to pay the claim of the building association.

Ans. Yes; to pay the claim they had against me; I gave him the check to draw the money & pay the claim of the association & to turn the balance over to me.

Ques. You got Mr. Ward to sign his approval on the deed to Bullard?

Ans. Yes; I suppose I did.

Redirect examination:

Ques. These provisions & goods you got from Seymour, Johnson & Co., were they for trading or for the use of your own family?

Ans. I had bought them for trade & tra-fic. I kept a family grocery & confectionary. I manufactured candy.

Ques. At the time you made the deed to Bullard, did he give you back a written bond for title?

Ans. Yes; he gave me something or other.

Ques. Where is that paper?

Ans. I declare I don't know where it is.

Ques. When Mr. Ward signed that approval on the deed, where was Mrs. Long?

108 Ans. I suppose, at home; he signed it in his room; I left my wife at home & found her at home when I went back.

Ques. Did Mr. Ward explain to Mrs. Long the contents of it?

Ans. I don't suppose Mr. Ward ever saw her in his life.

Ques. How did he come to approve it?

Ans. Simply because I asked him to do it. I carried the deed to Mr. Ward & asked him to approve it & he did so.

Re-cross:

Ques. You say the articles you got from Seymour & Johnson were for trade in your store?

Ans. Yes; I kept a provision store.

Ques. Did not your family get supplies from the store?

Ans. Sometimes they did, sometimes they did not; it was very seldom they took anything out of the store; I generally sent goods for my family from B—— & Brothers; I frequently got it from them; I bought it instead of furnishing it from the store.

(Closed for compl'ts.)

Dan'l Bullard (reintroduced).

Ques. Did you get notice of Long's bankruptcy?

Ans. I disremember whether I did or not.

109 (Objected to, as it is in writing.)

Ques. Did you know of Long being in bankruptcy?

Ans. I heard that he was in bankruptcy.

Ques. Did you receive a printed notice through the mail of his bankruptcy?

Ans. I don't know; but I heard your father (Mr. Jemison) say on the street that Long was going into bankruptcy for my benefit. I don't know if I had a printed notice of it. I heard he went into bankruptcy. (Paper handed to witness.)

Ques. Did you get a notice similar to that?

Ans. If ever I did I have forgotten it.

(It is agreed that bankrupt papers are in evidence.)

Closed.

Mrs. B. A. Long, sworn:

Ques. (Paper handed to witness.) Do you recollect signing that deed?

Ans. I recollect signing some paper; that looks like my signature.

Ques. Are you the wife of Francis M. Long?
Ans. Yes, sir.
Ques. Do you remember the time that paper was signed?
Ans. Yes, sir.
Ques. Was the paper read at the time?
110 Ans. No, sir.
Ques. State the circumstances under which it was signed.
Ans. I was at home when I signed it, in my dining room. Mr. Long called me & said he wanted me to sign a paper; he brought in Mr. Ross.
Ques. Was the other witness there at the time?
Ans. I do not recollect if there was any there at the time.
Ques. Who else was there besides those you have mentioned? Was Mr. Ward there?
Ans. No, sir; I don't think any other but my family & Mr. Ross. Mr. Ward was not there; he did not see me about it.
Ques. Did you have conversation with Bullard about borrowing money from him?
Ans. No, sir; I never asked Bullard to loan me money; I do not know that Mr. Long borrowed any.
Ques. Do you remember signing a note about the same time of the signing of this deed?
Ans. I signed something about the same time. I don't know if it was a note or what it was.
Ques. Did you say you did not know of any money being got, nor what the paper was, but your husband told you to sign it,
111 and you did so?
Ans. Yes, sir; that was all.
Ques. Did you ever take a homestead on the land you are now living on?
Ans. Yes, sir.

Objected to. Objection sustained.

Ques. Do you remember any remark made by Mr. Ross at the time you signed?

(Objected to. Overruled.)

[Ans.] I said I did not know what I signed.
Ques. Can you read and write?
Ans. Yes, sir.

Cross-examined:

Q. Was Mr. Bullard there when you signed the papers?
A. No, sir; my family & Mr. Ross were all——
Q. Do you say the paper was not read to you?
A. No, sir; I signed it at my husband's request; I did not know what it was.
Q. Did you know it was a deed to the property to secure Bullard?
A. I did not know anything about it; I just signed it at my husband's request.

112 *Complaint.*

Bibb Superior Court. April Term, 1871.

DANIEL BULLARD
vs.
F. M. LONG and BETSEY A. LONG. } No. 45.

It is agreed by counsel of the parties in the above case that said F. M. Long filed his petition in bankruptcy in the United States district court for the southern district of Georgia on 27th May, 1873; that he was, as appears by the record in said court, duly adjudged a bankrupt on the 29th May, 1873, and that on the 15th day of April, 1874, he was discharged, by order and judgment of said court, of & from all debts & claims probable, under the U. S. Bankrupt act against his estate, & which existed on the 27th May, 1873, excepting such debts, if any, as are by said bankrupt act excepted from the operation of a discharge in bankruptcy; that among the debts and claims against his estate returned in his schedule was the note sued on in the above-stated case. That schedule—A 2, B 1, B 4, B 5, & B 6—hereto attached are true copies of the said original schedule filed by the said F. M. Long,
113 so far as they relate to the plaintiff in the above-stated case as a creditor of said F. M. Long, bankrupt, & that pl'ff was duly notified of said proceedings in bankruptcy. It is further agreed that the property set forth in Schedule B, 5, & claimed by said F. M. Long as excepted from the operation of said bankrupt act, by the provisions of the 14th section thereof, is the same property conveyed or mortgaged by the said F. M. Long to secure the payment of the note sued on in the above-stated case, & that there is no other schedule attached to said petition relating to said matter. It is further agreed that Robert A. Nisbet was duly appointed assignee of said F. M. Long, & that the paper marked Exhibit "X," & hereto attached, is a true copy of the assignment, by the register in bankruptcy, of said Long's property to said Nisbet, assignee, and that the property hereto attached, marked Exhibit "Y," is a true copy of the schedule of property designated & set apart by said assignee to be retained by said Long, bankrupt, in which is included said property named in Schedule B 5. That said schedule of exempt
114 property marked "Y" was duly reported by said assignee, & that no exceptions thereto were filed by said plaintiff, nor any other creditor of said Long, bankrupt, and said counsel consent that this agreement may be used by the plaintiff in evidence on the trial of said cause in lieu of certified copy or copies of said petition & schedules and proceedings in said case in bankruptcy, subject, however, to all legal exceptions as to relevancy, competency, and admissibility which would apply to said certified copy or copies.

This 16th day of March, 1875.

LANIER & ANDERSON,
Pl'ff's Att'ys.

R. W. JEMISON,
Def't's Att'y.

SCHEDULE A. (2.)

Petition by Debtor.

Reference to Ledger or voucher.	Names of creditors.	Creditors holding securities—residences & description.	When & where contracted.	Value of securities.
----------	Dan'l Bullard------	Bullard's Station, M. & B. R. R., Twiggs Co. R. R., ag't.	1869, Macon, Ga.. ------	$2,500.00; 1,220 debt borrowed money, & pawned 2 gold watches, one worth $175; other, $75.
----------	Same------	------ do. ------	18 Nov., 1872, Macon, Ga. ...	2,500.00. Borrowed of him 1,000.40 & conveyed him house & lot in city of Macon, & took his bond for titles when the note for $1,220, due 18th Nov., 1873, shall be paid.

(Signed) F. M. LONG, *Petitioner.*

116 SCHEDULE B. (1.)

Petition by Debtor.

Statement of real & personal estate & effects whatever which are now in the possession, enjoyment, or under the control of petitioner, or which was held by any other person in trust for his use, or to the possession or enjoyment of which he is entitled at the date of filing petition.

Particular description of all real estate owned by petitioner or held by him, & whether under contract or leases.	Interest in lands, encumbrance thereon, if any, & dates thereof.	Statement of all particulars relating thereto.	Estimated value.
Lots Nos. 5 & 6, sq. No. 90, in the city of Macon, Co. of Bibb, State of Ga., the same having been purchased by him 6 day of Ap'l, 1860, of Jno. Lowe, & afterwards set aside to him under the laws of Ga., as a homestead, by the ordinary of Bibb Co., on — day of ——, 18—, & occupied by himself & family as a residence since Jan'y, 1866; & the same having been conveyed by deed to Dan'l Bullard to secure the payment of note given for the loan of $1,000.40, on 18 Nov., 1872, and said Bullard's bond for filler given back to him, conditioned upon the payment of his said note for $1,220, due 18th Nov., 1873.	Dan'l Bullard's deed fully describing in the first column of this Schedule B, & now under seizure by Gus. F. Cherry, sh'ff of Bibb Co., Ga., to satisfy a *fi. fa.* for $380.66, besides interest & costs, in favor of Seymour, Johnson & Co., described in Schedule A 3, said sale advertised to take place in said county on 3rd day of June, 1873.	No further particulars recollected, except the appraisement hereto, fixed, as in greenbacks, at—	2,500 00

(Signed) F. M. LONG, *Petitioner.*

117 SCHEDULE B. (5)

(*Petitioner by Debtor.*)

A particular statement of the property claimed, as excepted from the operation of said act, by the provisions of the 14th section thereof, giving each item of property & its valuation; and if it is real estate, its location, description, & present use.

Property Claimed to be Exempted from the Operations of Said Act & which may be Set Apart by the Assigns under the 14th Section.

One house & lot in the city of Macon, Ga. Lots 5 & 6, square 90, on which I now reside, worth in greenbacks valuation, $2,500.00.

(Signed) F. M. LONG, *Petitioner.*

118 SCHEDULE B. (6)

(*Petition by Debtor.*)

The following is a true list of all books, papers, deeds & writings relating to my trade, business, dealings, estate & effects, or any part thereof, which at the date of this petition are in my possession, or under my custody and control, or which are in the possession or custody of any person in trust for me, or for my use, benefit, or advantage, and also of all others which have been heretofore at any time in my possession, or under my custody, or control & which are now held by the parties whose names are hereinafter set forth, with the reason for their custody of the same:

Books.

——.

Deeds.

One from John Lowe to myself, to house & lot in the city of Macon, Ga., executed April 6th, 1860, conveyed to Daniel Bullard, — day of November, 1872, to secure debt for borrowed money, & his bond for titles to me to reconvey same when said money & interest included shall be paid. I hold Bullard's bond for titles.

Papers, etc.

The papers showing that said real property—that is, house & lot—
was set aside by the ordinary of Bibb county, Ga., & also the
119 personal effects for use of family, contained in said residence,
all duly recorded.

(Signed) F. M. LONG, *Petitioner.*

Copy.

EXHIBIT "X."

Form No. 18. *Assignment of Bankrupt's Effects.*

In the District Court of the United States for the Southern District of Georgia. In Bankruptcy.

In the Matter of FRANCIS M. LONG, Bankrupt.

SOUTHERN DISTRICT OF GEORGIA, *ss:*

Know all men by these presents, that Robert A. Nisbet, of the city of Macon, in the county of Bibb & State of Georgia, in said district, has been duly appointed assignee in said matter. Now, therefore, I, Alexander G. Murry, register in bankruptcy, by virtue of the authority vested in me by the 14th section of an act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867, do hereby convey & assign to the said Robert A. Nisbet, assignee as aforesaid, all the estate, real and personal, of said Francis M. Long,
120 bankrupt, including all the property, of whatever kind, of which he is possessed, or in which he is interested or entitled to have, on the 27th day of May, A. D. 1873, together with all his deeds, books, & papers relating thereto, saving & excepting such property as is exempted from the operation of this assignment by the fourteenth section of said act, to have and to hold all the foregoing premises to the said Robert A. Nisbet & to his heirs forever, in trust nevertheless, for the use & purposes & with the powers & subject to the conditions & limitations prescribed & set forth in said act.

In witness whereof I, the said register in bankruptcy, have hereunto set my hand & caused the seal of said district court to be affixed, this 25th day of June, A. D. 1873.

[L. S. of the court.]

ALEXANDER G. MURRAY,
Register in Bankruptcy.

JAMES McPHERSON, *Clerk.*

Filed this 26 day of June, 1873.

JAMES McPHERSON,
Clerk of said District Court U. S.

121 EXHIBIT "Y."

In the District Court of United States for the Southern District of Georgia. In Bankruptcy at Macon, on the 28th day of June, 1873.

In the Matter of FRANCIS M. LONG, Bankrupt.

DISTRICT OF GEORGIA, *ss:*

The following is a schedule of property designated and set apart to be retained by the bankrupt aforesaid as his own property under

the provisions of the 14th section of the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867, and under the amendment thereto.

Household & kitchen furniture and personal property:

3 beds & bedding, $100; 3 bedsteads, $15	$115 00
2 bureaus, $50; 2 rocking chairs, $16	66 00
1 folding table, $10; ½ doz. chairs, $6	16 00
1 writing desk, $10; 2 washstands, tubs, & pitchers, $5	15 00
1 clock, $10; 1 dining table, $3; cooking stove, $30	43 00
Wearing apparel of self & family	50 00
Books, $20; pictures, $80; 1 Colt's pistol, $8	108 00
1 mare & colt, $100; 3 gold watches & gold chains, $400	500 00
1 safe, $6; 1 sofa, $15; sewing machine, $85	106 00
	$1,039 00

122 Real Estate—Homestead.

House & lot in the city of Macon, Ga., being part of lots Nos. 5 & 6, in square No. 90, and in which bankrupt now resides—value in currency, $2,500.00.

ROBERT A. NISBET,
Assignee of said Bankrupt.

ALEXANDER G. MURRAY,
Register in Bankruptcy.

Filed June 28th, 1873.

A. G. MURRAY, *Reg'r.*

Filed Feb'y 24th, 1874.

JAS. McPHERSON, *Clerk.*

We agree that the foregoing is a correct copy of the written & brief of the oral evidence had on the trial of the within case.
Feb'y 11th, 1880.

LANIER & ANDERSON,
Compl't's Sols.
LYON & GRESHAM,
S. H. JEMISON,
Def'ts' Sols.

123 Approved & ordered filed.

J. D. STEWART,
Judge S. C. F. C.

Filed in office Feb'y 5th, 1881.

A. B. ROSS, *Clerk.*

124 *Motion for New Trial.*

Bibb Superior Court, October Adjourned Term, 1880.

FEBRUARY 10TH, 1881.

Hon. John D. Stewart, judge of the superior courts of the Flint circuit, in said State, presiding.

DANIEL BULLARD *vs.* FRANCIS M. LONG & WIFE.

It is agreed by counsel for both compl't & resp'd't, and ordered by the court, that the hearing of the above motion and the approval of the grounds thereof be heard in the city of Griffin, Ga., on Saturday, the 19th day of February, instant, or such other time, either in term time or vacation, as may be agreed upon by counsel, or, upon failure by them to agree, such time to be appointed by the judge, said motion having been made and filed, together with the brief of evidence agreed on by counsel and approved by the court at and during the term of the court at which said case was tried.

In open court February, 1881.

JOHN D. STEWART,
J. S., C. F. C.

125 *Judgment in Bibb Superior Court & Motion for a New Trial.*

DANIEL BULLARD *vs.* LONG AND WIFE.

After considering the within motion a new trial is hereby granted. I grant a new trial on the ground that, in my opinion, the money not paid the Building & Loan Association and the att'ys should not by a judgment of foreclosure been forced as against the homestead of Mrs. Long.

This May 16th, 1881.

JOHN D. STEWART,
Judge S. C. F. C.

Filed in office May 17th, 1881.

A. B. ROSS, *Clerk.*

126 *In Error from Bibb Superior Court in Granting Motion for New Trial on Terms. Motion was by Def'ts in Error.*

DANIEL BULLARD, pl'ff in error,
vs.
FRANCIS M. LONG and BETSEY A. LONG, defendants in error.

It appearing to the court that the judgment of this court in the above-stated case has been affirmed by the supreme court, unless the pl'ff, Daniel Bullard, will write off from his verdict the sum of three hundred dollars, as shown by remitters hereto attached; and it further appearing that said Bullard has written off from his said verdict the said sum of three hundred dollars, & also the interest thereon: It is ordered by the court that said remitters be entered, with this order, on the minutes of this court, as the judgment of this court. It is further ordered and adjudged that said verdict as amended

by the writing off of three hundred dollars from the principal debt & the interest thereon stand, and that said plaintiff, Bullard, have leave to enter judgment on said verdict as so amended; and for the costs of suit, to be paid by said def'ts, not however including the costs of carrying said case to the supreme court, & which
127 have been incurred thereon, which latter costs are to be paid as far as not paid by said Bullard. These respective costs to be taxed by the clerk.

April 22d, 1882.

T. J. SIMMONS, *J. S. C.*

ATLANTA, GA., *April 19th*, 1882.

The honorable supreme court met pursuant to adjournment: present their honors, Martin J. Crawford & Alexander M. Speer, associate justices, & Geo. Hillyer, judge superior court Atlanta circuit.

DANIEL BULLARD, pl'ff in error,
versus
F. M. LONG & wife, def'ts in error.

This case came before the court upon a transcript of the record from the superior court of Bibb county, and, after argument had, it is considered & adjudged by the court that the judgment of the court below be affirmed, unless the pl'ff in error will write off from his verdict in the court below the sum of three hundred dollars.

Bill of costs:

Entering case	$6 00
Recording opinion	75
Remitter	$2 00
Sheriff's fee	$1 25
	$10 00

128 Supreme Court of the State of Georgia.

CLERK'S OFFICE, ATLANTA, *Ap'r* 25, 1882.

I certify that the above is a true extract from the minutes of the supreme court of Georgia, & that Lanier & Anderson paid the above bill of costs.

Witness my signature and the seal of said court, affixed the day and year last above written.

[SEAL.] Z. D. HARRISON, *Clerk*

129 *Bill, &c. Bibb Superior Court. Verdict at October Ad'j'd Term,* 1880.

DANIEL BULLARD *vs.* FRANCIS M. LONG & BETSEY A. LONG.

Motion for new trial granted on terms, & judgment entered on said verdict, modified by order of the court, attached to remitter from supreme court. (See minutes.)

Whereupon it is considered, adjudged, & decreed by the court

that the verdict and finding of the jury in the above-stated case, as now altered by the remission of three hundred dollars from the principal sum of one thousand dollars, & the interest at ten per cent. per annum thereon, be, & is hereby, made the judgment & decree of this court; that compl't, Daniel Bullard, do recover of said defendants, Francis M. Long & Betsey A. Long, the sum of seven hundred dollars and forty cents, principal, the sum of five hundred & sixty-three dollars & sixty-one cents interest—8 years, two months & eleven days to date of former judgment, & interest from the 1st day of Feb'y, 1881, the date of the former judgment, to this date, to wit, eighty-six dollars and sixty-six cents as interest thereon at the rate of ten per cent. per annum, & two hundred dollars
130 attorneys' fees for compl'ts att'ys, and —— costs of the suit up to the former decree, to be taxed by the clerk of this court, all of which several sums to be made by a sale of the property described in compl't's bill, to wit: that parcel of land situate in the city of Macon, in said county & State, & being, according to the plan of said city, parts of lots Nos. five & six (5 & 6), insquare No. ninety (90), fronting on Oak St. ninety-one feet & nine inches (91 ft. 9), & running back the same width one hundred & fifty-one feet & four inches (151 ft. 4 in.), bounded on the east by a ten-foot alley, & being that part of what was formerly known as the Southwestern Hotel lot, lying immediately on said alley, said property to be sold by the sheriff after due advertisement, and the proceeds of said sale to be applied, first, to the payment of said several sums of money aforesaid, or so much thereof as such proceeds will pay, & if there is any excess the same to be paid over by the sheriff to the said defendants, to be used towards purchasing another homestead.

T. J. SIMMONS, *J. S. C.*

Decree signed this 27th day of April, 1882.

LANIER & ANDERSON,
Compl'ts' Sols.

131 GEORGIA, *Bibb County:*

To all and singular the sheriffs of said State and their lawful deputies, Greeting:

We comand you that of the lands and tenements of Francis M. Long and Betsey A. Long, to wit: "That parcel of land in the city of Macon, in said county and State, and being, according to the plan of said city, parts of lots numbers five (5) and six (6), in square number ninety (90), fronting on Oak street ninety-one (91) feet and nine (9) inches, and running back the same width of one hundred and fifty-one (151) feet and four (4) inches, bounded on the east by a ten-foot alley, & being that part of what was formerly known as the Southwestern Hotel lot, lying immediately on said alley;" you cause to be made the sum of seven hundred dollars & forty cents principal, the sum of five hundred and sixty-three dollars and sixty-one cents interest—eight (8) years, two (2) months, and eleven (11)

days to date of former judgment, & interest from the first day of February, 1881, the date of the former judgment, to this date, (to wit, April 27th, 1882,) to wit, eighty-six dollars & sixty-six [cents] as interest thereon, at the rate ten per cent. per annum; two hundred dollars att'ys fees for compl't's att'y's, and thirty-one dollars
132 costs of suit up to former judgment, with interest from this date (April 27th, 1882,) on the principal from April 27th, 1882, until paid; which said sums Daniel Bullard lately at our superior court of said county, on the 27th day of April 1882, to wit, at April term, 1882, of said court, by the judgment of said court, making the judgment of the supreme court the judgment of said superior court, said case having been carried by writ of error to the supreme court of said State, and judgment rendered thereon in favor of said Daniel Bullard, recovered against the said Francis M. Long and Betsey A. Long, his wife, and said described property for principal, interest, attorney's fees, & costs as aforesaid; and that you have the several sums of money before the superior court of said county on the fourth Monday in October next, to render to the said Daniel Bullard the principal, interest, attorney's fees, and costs as aforesaid; and have you then and there this writ.

Witness the honorable Thomas J. Simmons, judge of said court, this 23rd day of May, 1882.

A. B. ROSS, *Clerk.*

133 [Endorsed:] No. 9. Bibb superior court, October term, 1882. Daniel Bullard *vs.* Francis M. Long & Betsey A. Long. Principal, $700.40; interest to Feb'y 1st, 1881, 563.61; int. to April 27th, 1882, 86.66; int. from Ap'l 27th, 1882, at 10% per annum, ——; attorney's fees, 200.00; clerk, 21.00; this *fi. fa.*, 50; docketing 25; sh'ff charge, 4.00; jury, 6,00. Lanier & Anderson.

134 GEORGIA, *Bibb County:*

Personally came Francis M. Long & Betsey A. Long, who depose and say: That they have presented their bill of exceptions to his *his* honor Judge T. J. Simmons, who presided in the cause, to the judgment & decree rendered by the superior court of Bibb county, at the present term of said court now in session, in the cause of Daniel Bullard against these defendants, asking that the same be signed, certified, and allowed for the purpose of removing the same to the supreme court of Georgia, there to have said judgment and decree of said superior court in said cause revised and reversed for errors in said decree, as alleged in said bill of exceptions; & they further depose that, by reason of their poverty, they & each of them are unable to pay costs, or to give bond with good security for the eventual condemnation money, and their counsel have advised them that they have good cause for a writ or error.

F. M. LONG.
B. A. LONG.

Sworn to & subscribed before me, this 27th day of May, 1882.
J. A. McMANUS,
Ordinary.

Filed in office June 2nd, 1882.
A. B. ROSS, *Clerk.*

135 GEORGIA, *Bibb County:*

CLERK'S OFFICE, SUPERIOR COURT, *June 8th* 1882.

I certify that the annexed and foregoing 115 pages contain a true and complete transcript of the record of the cause in said court, wherein Daniel Bullard is complainant and Francis Long & Betsey Long are defendants, as the same therein appears.

That Francis M. Long & Betsey A. Long, the plaintiffs in error, have filed in my office their affidavit "*in forma pauperis*" of their inability to pay all costs that have accrued in said case, or to give bond with security, as required by law. I further certify that the original bill of exceptions in said cause, (a copy of the same being retained in said office,) as it is received from the judge of said court, is this day forwarded with the annexed transcript to the clerk of the supreme court of said State, and that the April term, 1881, of said court is now in session

Given under my official signature and the seal of said court.
A. B. ROSS, [SEAL.] *Clerk.*

136 [Endorsed:] No. 9. Macon supreme court. Sept. term, 1882. F. M. Long & Betsey A. Long *vs.* Daniel Bullard Trancript. Filed in office July 15th, 1882. Z. D. Harrison, C. S. C

137 GEORGIA, *Bibb County:*

Be it remembered that on the twenty-seventh day of April, in the [year] eighteen hundred & eighty-two, during the regular April term of the superior court of said county for said year, the honorable Thomas J. Simmons, judge of said court, presiding, there came on for hearing in said court the equity cause of Daniel Bullard against Francis M. Long and Betsey A. Long, and on the hearing the said court, after argument of counsel, rendered the following decree in said cause, the said judge of said court then & there signing the same, & causing the same to be placed on the minutes of said court as the decree of the court in said cause.

In Error from Bibb Superior Court on Granting Motion for New Trial on Letters, which Motion was made by Defendants in Error.

DANIEL BULLARD, Pl'ff in Error,
vs.
FRANCIS M. LONG & BETSY A. LONG, Def'ts in Error.

It appearing to this court that the judgment of this court in the above-stated case has been affirmed by the supreme court, unless the plaintiff Daniel Bullard will write off from his verdict the
138 sum of three hundred dollars, and also the interest thereon

it is ordered by the court that the remitter be entered with this order on the minutes of this court as the judgment of this court.

It is further ordered & adjudged that said verdict, as amended by the writing off of three hundred dollars from the principal debt, & the interest thereon, stand, and that said plaintiff Bullard have leave to enter judgment on said verdict as so amended, & for the costs of suit to be paid by said defendant, not, however, including the costs of carrying said case to the supreme court, and which have been incurred thereon, and which latter costs are to be paid so far as not paid by said Bullard—these respective costs to be taxed by the clerk.

April 27th, 1882.

T. J. SIMMONS,
J. S. C.

To which said decree so rendered by said court the said de-
139 fendant then & there excepted, and here now assigns the same as error.

2. The said defendant, for further special exception to said decree, say- that it is erroneous because it does not follow & conform to the verdict of the jury in said case.

3. The said defendant says that it authorizes the entering by plaintiff's attorney of a judgment on the verdict, whereas a decree by the court & not a judgment be entered by the plaintiffs was the only conclusion of said proceedings; an- defendant now assigns the same as error.

4. The said decree so rendered was imperfect & incomplete & did not cover the issues in said cause, and was on that account erroneous; and defendant now assigns the same as error.

5. The defendant, for further special *further* exception says that said decree did not conform to the judgment, direction, & decision of the supreme court rendered in said cause; and defendant here now assigns the same as error.

140 The said court then and there on the same day rendered, signed, & caused to be placed on the minutes of said court the further decree of the court in said cause, of which the following is a copy:

Bill, &c. Bibb Superior Court. Verdict at October Adj'd Term, 1880.

DANIEL BULLARD
vs.
FRANCIS M. LONG & BETSY A. LONG.

Motion for new trial granted on terms & judgment entered on said verdict modified by order of the court attached to remitter from supreme court. (See minutes.)

Whereupon it is considered, adjudged, and decreed by the court the verdict & finding of the jury in the above-stated case as now altered by the remission of three hundred dollars from the principal sum of one thousand — & the interest at ten per cent. per annum

thereon be, and is hereby, made the judgment and decree of this court, and that complainant, Daniel Bullard, do recover of said defendants, Francis M. Long and Betsy A. Long, the sum of seven hundred dollars and forty cents, principal, & the sum of five hundred and sixty-three dollars and sixty-one cents,
141 interest and costs, 8 years, two months, & eleven days, to date of former judgment, and interest from the first day of February, 1881, the date of the former judgment, to this date, to wit, eighty-six dollars and sixty-six cents as interest thereon, at the rate of ten per cent. per annum, and two hundred dollars att'y's fees, for compl't's att'ys and —— costs of the suit up to the former decree, to be taxed by the clerk of this court; all of which several sums to be made by a sale of the property described in complainant's bill, to wit: That parcel of land situated in the city of Macon, in said county & State, & being, according to the plan of said city, parts of lots numbers five & six (5 & 6), in square ninety (90), fronting on Oak street ninety-one feet & nine inches (91–9), & running back the same width one hundred & fifty-one feet & four inches (151–4), bounded on the east by a ten-foot alley, & being that part of what was formerly known as the Southwestern Hotel lot, lying immediately on said alley, said property to be sold by the sheriff after due advertisement, & the proceeds of sale to be
142 applied first to the payment of said several sums aforesaid, or so much thereof as such proceeds will pay, & if there is any any excess the same to be paid to the said defendants, to be used towards purchasing another homestead.

T. J. SIMMONS, *J. S. C.*

Decree signed this 27th day of April, 1882.

LANIER & ANDERSON,
Compl't's Sol's.

To the whole of which said decree, as well as that already herein copied, the defendants then & there excepted, & and here now assign the same as error.

And for special and specific exceptions to said decree the defendants except to so much of said decree as charges the property mentioned in said decree with the payment of two hundred dollars for fees of complainant's attorneys, the same not being money or other thing lent, paid, or advanced by the complainant for the removal of any incumbrances on said property, to wit: Lots five & six, in square ninety, of the city of Macon, constituting the homestead exemption of defendants; and the defendants here now assign
143 said part of decree as erroneous.

2. The defendants further excepted to that part of the said decree which charges said property with the payment of ten per cent. per annum on the principal sum of seven hundred dollars and forty cents, as stated in said decree, to wit: the sum of five hundred and sixty-three dollars & sixty-one cents ($563.61), interest 8 years, two months, & eleven days, to date of former judgment, & interest from the first day of February, 1881, to the date of this said decree, as

interest thereon at the rate of ten per cent. per annum, the said sum of five hundred and sixty-three dollars & sixty-one cents, & that of eighty-six dollars and sixty-six cents, being the result of a calculation on said principal sum of interest at the rate of ten per cent. per annum, and defendants here now assign the same as error.

3. The defendant further excepts to that part of said decree
144 which directs that the excess of the proceeds of the sale of said property directed by said decree, if any, should be paid over by the sheriff to the defendants to be used towards purchasing another homestead, and said defendants here now assign the same as error.

4. The defendant Francis M. Long separately excepts to that part of said decree which directs and decrees that said several sums mentioned therein, to wit, the sum of seven hundred dollars & forty cents for principal, and the sum of five hundred & sixty-three dollars & sixty-one cents, & the sum of eighty-six dollars & sixty-six cents for interest on said principal sum, and the sum of —— dollars for costs of said proceeding to be taxed by the clerk of said court—to be made by a sale of the property described in compl't's bill, to wit, city lots or parcels of land five & six (5 & 6), in square ninety, and as still further described in said decree by the sheriff, and proceeds of such sale applied first to the payment of said several sums of money, and the def't excepting hereto says that said
145 property so directed to be — for satisfaction of said sum, constitutes & is his homestead, exempted, set apart, and secured to him by the bankrupt court of the United States for the southern district of Georgio, in a bankruptcy proceeding in that court, in the matter of said defendant bankrupt as against this said debt of complainant's & all others of said defendant then existing, as appears by the record & proceedings in this case, and as recognized by this decree, said homestead being set apart, allowed, & secured to said defendant, then bankrupt, under & by virtue of section 5045 of the Revised Statutes of the United States, and by said act of the Congress of the United States, and which said exemption was valid against debt of said complainant, under & by virtue of said act of Congress and said part decree charging said exemption with the payment of said debt of complainants directing its sale, for that is in contravention & in violation of that act of Congress—repugnant thereto & destructive of the said exemption of said de-
146 fendant, and a denial of his right thereto & thereunder—and the said def't, Francis M. Long, here now assigns the same as error.

5. And the said Francis M. Long further excepts to that part of said decree as set out & stated in the foregoing fourth head or exception in charging his property with the payment of the said debt of compl't, in that it is in violation of his discharge in bankruptcy, as shown in the record & proceedings of this cause, and his rights under the same, as declared by & set out in section 5119 of the Revised Statutes of the United States, and is in conflict with and in derogation of that act of the Congress of the United States, and said defendant here now assigns the same as error.

And as the facts aforesaid do not appear of record, now comes the said defendants, jointly, & the said Francis M. Long, separately, as to the matters so excepted to by him separately, as stated herein,
147 and tender this their bill of exceptions within thirty days of the rendition of said decree & before the adjournment of said term of said court wherein said decree was rendered, and ask that the same may be signed, certified, and allowed that the errors complained of may be reviewed and corrected.

LYON & GRESHAM,
S. H. JEMISON,
Att'ys for Petitioners.

I certify that the foregoing bill of exceptions is true, and contains all the evidence material to a clear understanding of the errors complained of, and the clerk of the superior court of the county of Bibb is hereby required and ordered to make out a complete copy of the record in said case, and certify the same as such, and cause the same to be certified to the September term of the supreme court that the errors alleged to have been committed may be answered and corrected.

Given under my hand & official signature this the first day of June, 1882.

T. J. SIMMONS,
J. S. C. M. C.

148 [Endorsed:] No. 9. Macon. In supreme court of Ga., Sept. term, 1882. Filed in office July 15th, 1882. Z. D. Harrison, C. S. C. Francis M. Long, Betsy A. Long. In error from Bibb. Bill of exceptions. Original. Filed in office June 2d, 1882. A. B. Ross, clerk. Lyon & Gresham. Sam'l H. Jemison.

Due & legal service of the signing & certifying of the within bill of exceptions acknowledged. Copy and further service waived.
June 2d, 1882.

LANIER & ANDERSON,
Sol's for Bullard.

GEORGIA, *Bibb County:*

CLERK'S OFFICE, SUPERIOR COURT, *June 8th*, 1882.

I certify that the within and foregoing is the true original bill of exceptions in the case therein stated, as it is received from the judge of said court.

Witness my official signature and the seal of said court.

A. B. ROSS, *Clerk.*

149 Supreme Court of the State of Georgia.

WEDNESDAY, *Ap'l 19th*, 1882.

The honorable supreme court met pursuant to adjournment. Present: Their honors Martin J. Crawford and Alexander M. Speer, associate justices, and honorable Georgia Hillyer, judge of the superior courts for the Atlanta circuit, designated to preside in the following case, instead of honorable James Jackson, chief justice, who is disqualified therein.

The following judgment was rendered:

DANIEL BULLARD, Pl'ff in Error,
vs.
F. M. LONG & WIFE, Def'ts in Error.

This case came before the court upon a transcript of the record from the superior court of Bibb county, and, after argument had, it is considered and adjudged by the court that the judgment of the court below be affirmed, unless the pl'ff in error will write off from his verdict in the court below the sum of three hundred dollars.

150 HILLYER, J., delivering the opinion:

1. A deed made as a part of a usurious contract, though void as title, may yet in equity be treated as a mortgage, and the lien enforced for amount legally due, no question as to registry or any intervening equity being involved.

2. Where money was loaned ostensibly for the purpose of removing an incumbrance upon a homestead, and the question was whether the lender had notice that a part of the loan was diverted to another and different purpose, and on the trial the only evidence to the point was, the borrower testified that he told the lender what he wanted with the money, and how much, and that the lender replied, he did not care for that, "all he wanted was his papers fixed like he wanted them," and the lender himself testified that the money was to pay the incumbrance, and "other part of it for something else," such lender is charged with notice, and he cannot enforce against the homestead so much of the loan as was thus diverted.

151 And a verdict finding the contrary was properly set aside on motion.

Judgment affirmed on terms.

152 CLERK'S OFFICE, SUPREME COURT OF THE STATE OF GA.,
ATLANTA, GA., *M'ch* 5, 1883.

I hereby certify that the foregoing pages hereto attached contain true and complete copies of the transcript of the record and bill of exceptions, and of the judgment and opinion of the supreme court of the State of Georgia, and of the petition for a writ of error from the Supreme Court of the United States in the case therein stated, together with the original writ of error and citation from the Supreme Court of the United States in said case, as appears from records now of file in this office.

Witness my signature and the seal of said court hereto affixed the day and year above written.

[Seal of Supreme Court of the State of Georgia. Constitution 1845.]

Z. D. HARRISON,
Clk S. C. Ga.

Endorsed on cover: Georgia supreme court. No. 206. Francis M. Long and his wife, Betsey A. Long, plaintiffs in error, *vs.* Daniel Bullard. Filed 19th March, 1883.

8—206

117-617

In the Supreme Court of the United States

F. M. LONG and WIFE,

Plaintiffs in Error,

Vs.

DANIEL BULLARD,

Defendant in Error.

Error from the Supreme Court of Georgia.

ADDITIONS MADE TO THE RECORD,

By Consent of Counsel.

J. W. BURKE & CO., PRINTERS, MACON, GA.

The following Bill of Exceptions is the one on which the judgment of the Supreme Court of Georgia, found in printed record, at page , was pronounced:

STATE OF GEORGIA—BIBB COUNTY:

Be it remembered, that during the regular October Term, 1880, of the Superior Court of said county, the Honorable John D. Stewart, Judge of the Flint Circuit, presiding, then and there came on to be tried in said Court the case of Daniel Bullard vs. Francis M. Long and his wife, Betsy A. Long—being a bill in Equity in said Court, the trial of which cause resulted in a decree for the complainant against the defendants; that during said Term the said defendants moved for a new trial, before said Judge, when it was agreed, in writing, by the counsel for the parties, and assented to by said Judge, that said motion for new trial should be heard in vacation before the said Judge, at the time and place as specified in said writing, which is a part of the record of said cause, to which reference is hereby made, which motion for a new trial, together with the brief of the evidence had on said trial, was approved by the Court and made part of the record in said cause; that afterwards, to-wit: pursuant to said agreement, the said motion came on to be heard in vacation, to-wit: on the 16th day of May, in the year 1881, before the said Judge first aforesaid, when, after argument of counsel, the Court ordered and adjudged as follows:

BULLARD vs. LONG AND WIFE.

Judgment in Bibb Superior Court and motion for a new trial.

After considering the within motion, a new trial is hereby granted. I grant a new trial on the ground that, in my opinion, the money was not paid the Building and Loan Association, and the attorney's fees should not, by a judgment of foreclosure, be enforced against the homestead of Mrs. Long. This May 16th, 1881.

(Signed) JOHN D. STEWART,
Judge S. C. F. C.

To which ruling and judgment of the said Court granting said motion for a new trial, the said Daniel Bullard, complainant in said bill, then and there excepted, and now excepts, and assigns error in this, that the said Court erred in passing said judgment, and in granting said motion for a new trial as set forth in said judgment.

2. That said Court erred in setting aside the verdict and decree in said case, and granting a new trial on any or all of the grounds specified in said motion for a new trial. And now, within thirty (30)

days from the rendering of said judgment above complained of, comes the said complainant, the said Daniel Bullard, and tenders this his Bill of Exceptions, and as the matters aforesaid do not appear of record, prays that the same may be certified according to the Statute in such case made and provided. This 30th day of May, 1881.

LANIER & ANDERSON,
Complainant's Solicitors.

I do certify that the foregoing Bill of Exceptions is true, and contains all the evidence material to a clear understanding of the errors complained of; and the Clerk of the Superior Court of said county of Bibb is hereby required and ordered to make out a complete copy of the record of said case, and certify the same as such, and cause the same to be transmitted to the September Term, 1881, of the Supreme Court, that the errors alleged to have been committed may be considered and corrected. This 6th day of June, 1881.

JOHN D. STEWART,
Judge S. C. F. C.

This is the judgment of the Supreme Court of Georgia to which the Writ of Error in this case was taken, and by mistake of the Clerk of that Court was not sent up with the transcript:

SUPREME COURT OF THE STATE OF GEORGIA,

ATLANTA, GA., October 31, 1882.

The Honorable Supreme Court met pursuant to adjournment.

Present, their Honors James Jackson, Chief Justice, and Martin J. Crawford and A. M. Speer, Associate Justices.

Hon. James Jackson, Chief Justice, left the Bench, and Hon. H. B. Tompkins, Judge of the Superior Court of the Eastern Circuit, went upon it, when the following judgment was rendered:

Francis M. Long, Plaintiff in error, *vs.* Daniel Bullard, Defendant in error.

This case came before the Court upon a transcript of the record from the Superior Court of Bibb County, and after argument heard it is considered and adjudged by the Court that the judgment of the Court below be affirmed.

CLERK'S OFFICE SUPREME COURT OF GEORGIA,

ATLANTA, GA., January 11, 1886.

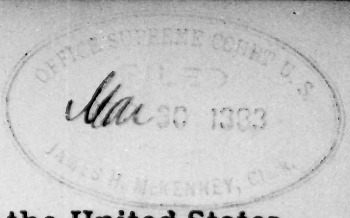
I hereby certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said Court hereto affixed the day and year first above written.

Z. D. HARRISON,
Clerk S. C. of Georgia.

The opinion of the Supreme Court of Georgia in this case was not sent up in the transcript of the record by the Clerk of that Court, and is to be found in 69 Georgia Reports, 678, which is to be used in the argument of this case, by consent of counsel for defendant in error, who likewise consents that no representation of Betsy A. Long, deceased, is necessary, as she was an immaterial party, and that the cause proceed to trial as it is.

17-617



In the Supreme Court of the United States.

Francis M. Long et uxor vs. Daniel Bullard.

In Error or Appeal in Equity from the Supreme Court of Georgia.

MOTION FOR SUPERSEDEAS.

We put this application on the power given to this Court by 14th Section of the Judiciary Act of Congress, and §716 of Revised Statutes of the United States, "to issue all writs not specifically provided for by Statute, which may be necessary for the exercise of their respective jurisdiction, etc., as interpreted and enforced in *ex parte* Milwaukie R. R. Co., 5 Wall., 190." The case being properly in this court, by appeal, we have, by the fourteenth section of the Judiciary Act, a right to issue any writ which may be necessary to render our appellate jurisdiction effectual. For this purpose the writ of supersedeas is eminently proper in a case where the circumstances will justify it." "Hardeman vs. Anderson, 4 Howard, 640, is an example of the exercise of this power precisely in point."

The explanation of the ruling in Hardeman vs. Anderson on this subject, as given in Hogan vs. Ross, 11 Howard, 296, is not very satisfactory; and notwithstanding this latter ruling, the former decision is adhered to and reiterated in the subsequent case of *ex parte* Milwaukie R. R. Co., 5 Wall., 188. The writ of error in this case was sued out and allowed within ten days after the judgment complained of was rendered.

In this case there is no individual or personal liability for either of the appellants for the debt—the debt was that of the husband and not of the wife, and from that liability he has been discharged by the judgment of the Bankrupt Court. The proceeding is purely one to charge the property, and can only affect that and not the

individuals. Besides, were it otherwise, the whole debt does not exceed $1.600—the property is worth, according to the testimony of best real estate brokers, $2.200, an excess ample to cover all damages this Court might assess in case of affirmance under §1010 of Revised Statutes.

As a further ground for this interference of the Court by a writ of supersedeas and as a means of avoiding any possible conflict with other cases on this subject, we submit the accompanying bond, executed in time under the Statutes, §1007 Revised Statutes, but not tendered to the Judge allowing the appeal or writ of error, because it was not approved by counsel for defendant in error, and held back with the hope that a bond would be given that would be satisfactory.

We think the bond is good, and if one of this Court could now approve the bond which, the circumstances considered, could safely be done, and a supersedeas ordered on this, it would obviate all difficulty.

R. F. LYON,
Attorney for Appellant.

1232

117-617

OFFICE SUPREME COURT U.S.
FILED
MAR 26 1883
JAMES H. McKENNEY, Clerk

In the Supreme Court of the United States.

Francis M. Long et al. vs. Daniel Bullard.

PETITION FOR WRIT OF SUPERSEDEAS.

To the Honorable Supreme Court of the United States:

The petition of Francis M. Long and his wife, Betsey A. Long, citizens of the State of Georgia, respectfully sheweth that there is now pending in this Honorable Court an appeal by writ of error from the final judgment of the Supreme Court of the State of Georgia, together with the record of said cause wherein the judgment complained of was rendered—wherein petitioners were plaintiffs in error, and Daniel Bullard defendant in error, the same having been a proceeding in equity, commenced in the Superior Court of Bibb county, Georgia, by said Daniel Bullard against your petitioners, to subject a certain house and lot in the city of Macon, which your petitioners held under the title set out in said proceedings, to the payment of a certain debt claimed by said Bullard to be due to him by petitioners for the sum of twelve hundred dollars, besides interest, attorney's fees and costs. For this debt petitioners had executed to said Bullard their joint and several note, and to secure the same, had on or about that time executed to said Bullard their joint deed to said lot to-wit: Parts of lots number five (5) and six (6), in square number ninety (90), in the city of Macon, fronting on Oak street 91 ft. 9 in., and running back the same width, 151 ft. 4 inches.

The lot belonged to petitioner, Francis M. Long, and the only interest that petitioner Betsey A. had in it, was that of a claim for a homestead that had been set apart for her and her children under the constitution and laws of the State of Georgia. The object of this proceeding in equity on the part of Bullard, was to have a sale of the property under the decree of the Court for the payment of the aforesaid debt.

To this proceeding defendant had replied by sufficient pleas and answer that the debt was that of Francis M. Long, for borrowed money, and not that of his wife Betsey A. Long. That the said Francis M. had been discharged from that debt by the judgment of the Bankrupt Court of the United States, for the Southern District of Georgia, on his voluntary application to that Court, to which Bullard was a party, duly notified. That said property belonged to him individually, and in that proceeding had been returned in the schedule attached to his petition, and that the same was claimed and allowed and set apart by the judgment of that Court as a Homestead Exemption against that and all other debts.

On the trial of said cause in the Courts of Georgia, it was admitted in writing as the undisputed facts on these questions, that petitioner Francis M. Long had applied for the benefit of the Bankrupt Law, had been adjudged a bankrupt, that this debt and this property had been returned in his schedules, that Bullard as the holder and owner of this debt had been duly notified, that petitioner had been duly discharged by the judgment of that Court from this debt, and that this property had been set apart and allowed to him as a Homestead in said Bankrupt Court.

Yet, on the trial of said cause in the Supreme Court of Georgia, these defences of petitioner were overruled and refused, and the same not allowed, but a decree rendered notwithstanding these admitted facts, charging said property with the payment of this debt, and directing its sale, thus defeating the Homestead Exemption secured to petitioner by the laws of Congress, as well as the discharge under that law from the payment of this debt, and on account of these rulings this writ of error was prayed for and allowed within the time prescribed after the entry of the said judgment, removing said cause to this Court under the constitution and laws of the United States, to have the same considered and corrected.

The whole matter involved in said controversy is, whether the said debt is a proper charge against said property under the laws and facts, and while the whole amount of said debt as fixed by the decree amounts only to the sum of fifteen hundred and fifty dollars, ($1,550) the said property is of the full and actual value of twenty-two hundred dollars, far in excess of said claim, together with interest, costs and all possible damages for delay, as will appear by affidavits and certificates hereto attached, and this is all the property, or right of property that petitioners have, and on that account, and on account of this claim upon it, they have, after the most persistent effort, been unable to give a bond to supersede the execution of said decree pending the hearing of said cause in this Court, that was either satisfactory or sufficient, in the judgment of his own or defendant's counsel. Petitioners have paid the costs of the trial of said cause in the Supreme Court of Georgia, the costs of the removal of the case to this Court,

and the costs of the trial in this Court, which has exhausted their ability to either raise money or give security for the same.

By reason of this poverty and consequent inability and failure to give bond, since the allowance of said writ of error and the removal of the said cause to this Court, the defendant in error, Bullard, has taken out execution under said decree, caused the same to be levied on said property and advertised it for sale under said levy on the first Tuesday in April, the third day of said month, according to the laws of the State of Georgia; and unless a *supersedeas* thereof be issued and allowed by this Honorable Court, this property will be sold at such sale and petitioner's homestead exemption under the bankrupt laws of the United States cut off and forever lost.

To this end may it please the Court to issue a writ of *supersedeas* from this Honorable Court directed to the said Daniel Bullard and to G. S. Westcott, Sheriff of the County of Bibb and State of Georgia, commanding a stay of execution or any further proceedings on the judgment in said case of Daniel Bullard against Francis M. Long and Betsy A. Long, his wife, pending the aforesaid writ of error in this Court.

And as in duty bound your petitioners will ever pray, etc.

R. F. LYON,
Attorney for Petitioners.

GEORGIA—BIBB COUNTY.

Before me personally came Henry Horne who, on oath, deposes and says that he is a real estate agent in the city of Macon, Georgia, and is well acquainted with the value of property in said city; that he has examined the premises whereon Francis M. Long and wife reside in said city, being part of lots five and six, in square ninety, on Oak street, and in his opinion is worth the sum of twenty-two hundred dollars market value and the sum of $25.00 per month full rent for same.

H. HORNE.

Sworn to and subscribed before
me this ..... day of March, 1883.

W. G. SOLOMON, Notary Public, Bibb Co., Ga.

GEORGIA — BIBB COUNTY.

Before me personally came George B. Turpin who, being duly sworn, deposes and says that he is a real estate agent in the city of Macon, Georgia, and is well acquainted with the value of property in said city; that he has examined the premises whereon Francis M. Long and wife reside, being part of lots five and six, in square ninety,

on Oak street, and in his opinion said property is well worth the sum of twenty-two hundred dollars market value, and the sum of twenty-five dollars per month for rent. GEO. B. TURPIN.

Sworn to and subscribed before me
this 19th day of March, 1883.

J. MONROE OGDEN, Notary Public, Bibb Co., Ga.

GEORGIA—BIBB COUNTY.

Ordinary's Office of said County.

I hereby certify that George B. Turpin and Henry Horne are personally known to me as real estate brokers in the city of Macon in active business and well acquainted with the value of real property in said city.

Given under my hand and seal of office this 20th day of March, 1883. J A. McMANUS,
Ordinary.

117-617

OFFICE SUPREME COURT U. S.
FILED
MAR 31 1893

In the Supreme Court of the United States.

Francis M. Long et al. vs. Daniel Bullard.

APPLICATION FOR WRIT OF SUPERSEDEAS.

In reply to the said application the undersigned, counsel for the respondent, Daniel Bullard, begs to represent and make known to the Court:

1st. That material statements made in the said application, forming the basis of the adjudications in the State Courts, are not correct as stated, in this: In April, 1868, Francis M. Long executed his deed of mortgage on said property, in Macon, to the Loan Association, to secure payment of his bond for $3,400, given for money borrowed from it by him. Failing to pay the debt, the mortgage was foreclosed in 1871, and the property being about to be brought to sale, under execution for over $2.000 due on the judgment, Bullard loaned Long money to make a compromise settlement of this debt, and save the property from sale—to secure said debt Bullard taking the deed from Long and wife, which appears in the record, which was absolute on its face, and being for the same property. Some six years afterwards the bill was filed for sale of the property to pay the debt, upon which the decree now complained of was rendered.

When Long applied for the benefit of the Bankrupt Act, it was distinctly understood between counsel for the parties in interest, that any exemption said Long might claim to said lot would be subject to Bullard's deed, and the fact was so in substance stated in Long's schedule. So, also, when the proceedings were had for a homestead for Long's family (his wife and an adult son) in the State Court—our State laws and adjudications as to homestead allowing the home-

stead *subject* to the deed. For further facts in the case reference is made to the record connected with the writ of error.

2d. The principal and interest at date of last decree, April, 1882, amounted to $1,550.67, the interest from that date till the hearing in the United States Supreme Court would amount to several hundred dollars. The unpaid costs stated on the execution, are $62.50. The appended evidence shows that Long gave in the lot for taxes, under oath, in 1881, at $1,600.00, and in 1882, at $1,500.00. It is feared it would not bring that at sale.

3d. No supersedeas bond was tendered within the time prescribed by law, or at any time, nor has any application therefor to the Supreme Court of Georgia been made or granted. 2d Abbott's United States Practice, page 260; 21st Wallace, page 17.

The applicant remains in possession, and being utterly insolvent, gives no security for accumulating interest, damages and costs. There is no insurance on the property.

There was no judgment taken against the defendants personally, only against the property.

CLIFFORD ANDERSON,
For respondent.

DANIEL BULLARD vs. FRANCIS M. LONG AND WIFE.

Decree rendered in Superior Court, Bibb county, Ga., on Remittitur from Supreme Court, dated April 27th, 1882.

Execution issued thereon for principal	$700 40
Interest to date of decree	650 27
Attorney's fees	200 00
Costs of writ	62 50

Interest from date of decree till paid.

I certify that the above is a correct statement of the sums of money for which said execution has issued.

This 27th day March, 1883.

A. B. ROSS,
Clerk of said Court.

TAX COLLECTOR'S OFFICE, BIBB COUNTY GA.,
MACON, GA., March 24th, 1883.

I certify that Francis M. Long, of the city of Macon, in said county, gave in for taxation, for State and county taxes, his house and lot in said city and county, and being the only real property returned by him, for the sum of sixteen hundred dollars for the year 1881, and at fifteen hundred dollars for the year 1882, as the value thereof, his said "returns" being made under oath.

Witness my hand and official signature, this 24th day of March, 1883.

H. J. PETER, T. C. Bibb County.

STATE OF GEORGIA—BIBB COUNTY.

Before me personally came R. W. Cubbedge, of said county and State, who being duly sworn, saith that as a real estate agent and broker for a number of years in the city of Macon, in said county, he was called on to examine the lot of F. M. Long, in said city, with George B. Turpin and Henry Horne; that he found the lot in very bad state for the want of repairs; that in deponent's opinion $2,000.00 would now be a very full and an outside price for said lot; that the place is depreciating in value, and that if no needful repairs are made thereon in three and a half or four years, the value of the place will be greatly reduced, and it is very doubtful if by that time it would bring $1,500.00. R W. CUBBEDGE.

Sworn to and subscribed before me,
this 27th day of March, 1883.
ELLIOTT ESTES, Notary Public Bibb Co., Ga.

1537

117-617

Filed
mar 26, 1

In the Supreme Court of the United States, No. ... October Term, 1883.

Francis M. Long and Betsey A. Long vs. Daniel Bullard.

Error, from the Supreme Court of Georgia.

MOTION TO HAVE SUPERSEDEAS GRANTED.

The appellants in the above stated case, Francis M. Long and Betsey A. Long, having filed in this Court their petition for the issuing of the writ of *supersedeas* upon the grounds therein fully and distinctly set forth, and copies of which petition, together with the affidavits in support thereof accompany this motion, now came said appellants, by their counsel, Richard F. Lyon, and move this Honorable Court to grant said writ of *supersedeas* in accordance with the prayer of said petition.

RICHARD F. LYON.
Attorney for Movants.

In Support of this motion reference is made to 4 Hor
Ex parte Milwaukee R.R. Co. 5 Wal
Hardeman v Anderson. 4 Hor
Rev'd Sts U S § 716

1332

117-617

Filed
mar 26, 1883

In the Supreme Court of the United States, No. ... October Term, 1883.

Francis M. Long and Betsey A. Long vs. Daniel Bullard.

Error, from the Supreme Court of Georgia.

MOTION TO HAVE SUPERSEDEAS GRANTED.

The appellants in the above stated case, Francis M. Long and Betsey A. Long, having filed in this Court their petition for the issuing of the writ of *supersedeas* upon the grounds therein fully and distinctly set forth, and copies of which petition, together with the affidavits in support thereof accompany this motion, now came said appellants, by their counsel, Richard F. Lyon, and move this Honorable Court to grant said writ of *supersedeas* in accordance with the prayer of said petition.

RICHARD F. LYON.
Attorney for Movants.

In Support of this motion reference is made to
Ex parte Milwaukee R.R. Co. 5 Wall. 188
Hardeman v Anderson. 4 How. 642
Rev. Sts. U.S. § 716

117-617

Office Supreme Court U. S.
FILED.
MAR 25 1886
JAMES H. McKENNEY.
CLERK.

In the Supreme Court of the United States

F. M. LONG and WIFE,

Plaintiffs in Error,

Vs.

DANIEL BULLARD,

Defendant in Error.

Error from the Supreme Court of Georgia.

ABSTRACT AND BRIEF

R. F. LYON,
T. B. GRESHAM.
Attorneys for Plaintiffs in Error.

J. W. BURKE & CO., PRINTERS, MACON, GA.

IN THE SUPREME COURT OF THE UNITED STATES.

Francis M. Long and Wife, Plaintiffs in Error, vs. Daniel Bullard, Defendant in Error.

ERROR, FROM THE SUPREME COURT OF GEORGIA.

ABSTRACT.

Francis M. Long, the plaintiff in Error, being the owner of parts of lots five [redacted] and six, in square ninety, in the city of Macon, gave a mortgage deed to the Ocmulgee Building and Loan Association to secure the sum of $3,400.00, executed on 14th of April 1868, which mortgage was foreclosed according to the requirements of the Statutes of this State, and final judgment was signed on the 5th of May, 1871, for the principal sum of $2,064.90, besides interest and costs, from which execution issued on the 5th of June, 1871, and was levied on the premises on the 1st of July, 1871. Before this levy, in 1869, Betsy A. Long, the wife of Francis M. Long, took a homestead in these premises in the Court of Ordinary of Bibb county, under the laws of the State of Georgia.

Now pending this levy and before any sale, to-wit: on the 18th of November, 1872, for the loan of $1,000.40 by Daniel Bullard, F. M. Long and his wife made their note, payable to said Bullard or bearer, for $1,220.00 to bear ten per cent. interest from its date if not promptly paid, and all costs and counsel fees incurred by Bullard in collecting the note. That note is dated November 18th, 1872. With this money the execution in favor of the Ocmulgee Building and Loan Association was paid off and satisfied, and Long and wife executed an absolute deed to Bullard conveying this same property, and Bullard gave to Long a bond to reconvey when this money was paid. This deed being held void as a deed, because it was tainted with usury, Bullard filed this bill to foreclose it as an equitable mortgage. Before the bill was filed in 1873, F. M. Long was adjudged a bankrupt on his own petition, and in his schedules he returned this property, and that it was encumbered with this deed to Bullard to secure the said loan of $1,000.40, and this debt to Daniel Bullard was returned as one of his debts, and notice was given him of the adjudication. Bullard never went into the Court of Bankruptcy to prove his debt. Long

had this property set aside as his exemption under the Bankrupt Law. Long replied to the proceeding to foreclose the equitable mortgage, that it was his individual debt, and his wife had no interest in it, and that she was only a security, and was not liable for his debts under the laws of Georgia; that he had received his final discharge in Bankruptcy, and he pleaded that discharge in bar of this debt and of the right of the plaintiff to foreclose his mortgage for the purpose of enforcing it against that property; that the property was discharged from the payment of that debt and from the lien of the mortgage by the exemption in Bankruptcy. All these facts are plainly made to appear in support of their pleas and defence.

The judgment of the Court and final decree in the cause deny the validity of these defences under the law, holding that the discharge did not affect this mortgage debt, and that the exemption was also not good against the mortgage; but that the same could be enforced against it.

These are the questions upon which the writ of error rests, and which are to be decided by this Court.

Betsy A. Long, the wife, is dead—the only interest she had in the matter being that which was acquired under the homestead proceedings in the State Court of Ordinary, and there is no necessity for her representatives being made parties to the case, they having no interest.

F. M. LONG AND WIFE vs. DANIEL BULLARD.

SUPREME COURT OF THE UNITED STATES—No. 206.

Plaintiff in error relies upon the following assignments of error:

1st. The Court erred in holding and deciding that the exemption set apart to plaintiff in error by the Bankrupt Court was not good against this mortgage debt of defendant in error.

2d. The Court erred in holding and deciding that the said property of plaintiff in error was charged with the payment of the debt to Bullard, from which debt he had been discharged by the laws of the United States, in said Bankrupty proceedings, [redacted].

R. F. LYON,
T. B. GRESHAM,
Attorneys for Plaintiff in Error.

BRIEF.

1. This transaction, to secure this debt was made under §1969, *et seq.*, of the Code of Georgia, and according to that statute amounts to an absolute conveyance, passing the title of the property to the creditor, and upon the further express permission that it *shall not be a mortgage.* The object of the law, doubtless being to cut off Homestead Exemption, Dower, and other benefits given to the debtor against the creditor, under certain circumstances, and if it had been executed according to law as a valid deed, the judgment of the Court would have been right; because the title being in the creditor, a debtor would not have been entitled to a Homestead in it under either State or Federal Law; but this deed being given to secure a usurious debt, was void as title—(Code §2,057,) and being void it left the transaction where it was before the deed was made, simply a debt of Long to Bullard, unless Bullard had an interest in the title, or the title itself, or such an equity as arises between vendor and vendee for unpaid purchase money, as in Lewis vs. Hawkins, 23 Wall, 119; or Bailey vs. Greenleaf, 7 Wheat 46; Brown vs. Gilman, 4, Wheat 255. Here Bullard's debt was simply one of lending and borrowing, and by the Bankrupt Act, Rev. Stat. 5119, the Bankrupt by his discharge was released from all debts, except debts created by fraud or embezzlement, or by his defalcation as a public officer, under neither of which heads does this debt come.

But concede that this is a mortgage, which it is not, or even an equitable mortgage. In Georgia, a mortgage is but a security for a debt—it does not give any interest in the title at all. See Code 1954; 1 Ga., 177; 7 Ga., 183; 35 Ga., 344; 36 Ga., 138; 45 Ga., 628; and as a mortgage it is only an incident to the debt, and when the debt was extinguished by the discharge in Bankruptcy the mortgage fell with it: 1 Hill on Mortgage, ~~233, 237, 173.~~ 443, 447. 1 do 457 There being no debts, the mortgage had nothing to stand upon.

This view depends upon the fact that the mortgaged premises were set apart as an exemption to the Bankrupt. Were this not so, the creditor's mortgage lien would be entitled to payment out of that property in preference to any other debts of inferior dignity or lien.

These views are conclusive as settled by the recent decision of the Supreme Court of Georgia, delivered on January 27th, 1886, in the case of Broach vs. Smith *et al*, Ex'rs not yet published, where the Court holds that a deed under Section 1969 of the Georgia Code is void as title and cannot be enforced as an equitable mortgage, and that the debtor having been adjudged a bankrupt and received his discharge after having given a deed of this character, the debt itself was discharged

2. The exemption in Bankruptcy was valid as against this debt, and against this decree and judgment under the Act 5045 Rev. Stat., and this decree was void because it was in contravention of that Section of the Bankrupt Act. It has been suggested, that while this may be generally true, it is not true as to this sort of exemption in the State of Georgia, because, by the terms of that Section, reference is made to the exemptions allowed by the Constitution and Laws of the State in which it is set apart, and the Courts in the State having ruled that a debt created for the removal of an incumbrance, or for purchase money, or debts created before the Constitution of 1868, and liens created before that time, were good against the homestead set apart under the State laws, the bankrupt took his exemption subject to these exceptions. We say that this is not true, and is not the proper construction of the bankrupt exemption, for reference is made in the Bankrupt Act to the homestead allowed by the State, to ascertain the specific articles and the amount of the exemption; but when the exemption is once reached the Act declares that it shall be good against all debts, except those specified in the Act itself. It is true that the Bankrupt Act declares that leins shall not be affected by assignment in Bankruptcy, but this does not mean that such a lien prevents exemption. It only means in the administration of the bankrupt's estate, the liens of creditors shall retain their priority, as otherwise, a creditor, by taking a mortgage, would cut off the right of a bankrupt to exemption entirely and defeat the whole bankrupt scheme. See *ex parte* Christy, 3 How., 292.

3. This exemption to the plaintiffs in error was granted by a Court having full jurisdiction of this question in proceedings instituted by him to obtain the benefits of that law, of which this exemption was an important and material incident, in which all the creditors were directly interested, and this creditor most especially so, that application being accompanied by a claim for exemption on this particular land. Now, inasmuch as this creditor had the notice of this proceeding required by law, and was thus directly interested in the subject matter, and the Court had full jurisdiction, why is he not bound by the judgment rendered, as all other parties are, not only as to the final judgment, but as to all the proceedings had by that Court under the law. If so, was he not bound to appear in that Court, and if he did not so appear is he not forever estopped by the judgments therein rendered. *Ex parte* Christy, 3 How., 292, 426; 6 How., 486.

R. F. LYON,
T. B. GRESHAM,
Attorneys for Plaintiffs in Error.

Opinion Supreme Court of Georgia, October Term, 1885.

Broach vs. Smith, Executor of Kelley.

By the Court—Blandford, Justice, delivering the opinion :

This was a bill filed by Kelley against Broach, to foreclose, as an equitable mortgage, a deed made by Broach to Kelley, which deed is void as to title by reason of usury. The deed was made as security for money advanced by Kelley to Broach, and a bond for title given to Broach by Kelley, conditioned to make titles to the land when Broach shall pay the money loaned. Broach gave his note for the money borrowed from Kelley.

After this, Broach was adjudged a bankrupt, and received his discharge in bankruptcy.

The question in this case is, can a conveyance, made under Section 1969 of the Code, to secure a debt, and which is void as to title for usury, be foreclosed as an equitable mortgage ?

This Court has never decided that this can be done. In Bullard vs. Long *et ux*, 68 Georgia, 821, Hillyer, Judge, presiding in the place of Jackson, Chief Justice, announced, that a deed made as a part of a usurious contract, though void as title, may, in equity, be treated as a mortgage, and the lien enforced for what may be legally due.

This dictum is entirely obiter ; there was no such question made by the record in that case.

That record shows that a deed was foreclosed as an equitable mortgage ; upon a motion for new trial the Court granted a new trial alone upon the ground that the money loaned, which was not used in discharging liens on the homestead property, should constitute no part of the judgment of foreclosure, and this grant of a new trial on this ground alone was excepted to and was the only ground of error in that case, and this ruling of the Court below was affirmed.

So we are left entirely free and untrammelled to consider and decide this case. See 1969 of the Code, which authorizes deeds to be made with bond for titles back as security for money, declares that such conveyances shall be held by the Courts as absolute conveyances and not mortgages. The creditor, when he takes a deed like this, takes it as an *absolute conveyance*, not as a mortgage ; this is for his benefit to make his security better, and the Courts are required by the Act to so hold.

If a deed be tainted with usury it fails as a conveyance of title ; but how does it thereby, by the illegal conduct of the vendee, become

a mortgage? Can the illegal act of the vendee change a security which the law declares the Courts shall hold to be and absolute conveyance into an equitable mortgage? We know of no law or rule in equity which authorizes this to be done.

The creditor must stand on the security which he bargained for. If the same becomes ineffectual by his own illegal conduct, let him abide his bargain.

His illegal and wrongful conduct, which destroyed his security, will not authorize a Court of Equity to change the security into a mortgage, thus to help one who is thus guilty of illegal and wrongful conduct to avoid the consequences of such acts and conduct.

So we hold, in this case as the deed taken by the defendant in error from the plaintiff in error is void, because tainted with usury, cannot be foreclosed as an equitable mortgage, and is not a lien on the property thereby conveyed.

If what we have said be correct, then, when Broach was discharged in bankruptcy, it was a discharge of the debt due Kelley.

It is insisted that the deed may be foreclosed for unpaid purchase money.

The vendor's equitable lien for unpaid purchase money is expressly abolished by the Code of 1863, §1997. And the Courts have no power to re-establish the same, whatever may have heretofore been said in cases decided by this Court, is hereby overruled.

We do not mean to hold that when it may be necessary for a defendant to resort to equity under circumstances with this case that a Court of equity may not compel him to do equity by paying the money, and lawful interest thereon.

Judgment Reversed.

CLERK'S OFFICE SUPREME COURT OF GEORGIA,
ATLANTA, GA., March 18th, 1886.

I hereby certify that the foregoing pages hereto attached contain a true and complete copy of the opinion of the Supreme Court of the State of Georgia, in the case therein stated, as appears from the original, now of file in this office.

Witness my signature, and the seal of said Court hereto affixed, the day and year above written.

Z. D. HARRISON,
Clerk Supreme Court of Georgia.

I hereby certify that the above attestation is in due form.

JAMES JACKSON,
Chief Justice Supreme Court of Georgia.

The sections of the Code of Georgia, cited in the brief, are as follows:

SECTION 1969. Whenever any person in this State conveys any real property by deed to secure any debt to any person loaning or advancing said vendor any money, or to secure any other debt, and shall take a bond for titles back to said vendor upon the payment of such debt, or debts, or shall in like manner convey any personal property by bill of sale, and take an obligation binding the person to whom said property was conveyed to reconvey said property upon the payment of said debt or debts, such conveyance of real or personal property shall pass the title of said property to the vendee: *Provided*, that the consent of the wife has been first obtained, till the debt or debts which said conveyance was made to secure shall be fully paid, and shall be held by the Courts of this State to be an absolute conveyance, with the right reserved by the vendor to have said property reconveyed to him upon the payment of the debt or debts intended to be secured agreeable to the terms of the contract, and not a mortgage.

SECTION 2057. (f) All titles to property, made as a part of an usurious contract, or to evade the laws against usury, are void.

SECTION 1954. A mortgage in this State is only a security for a debt, and passes no title.

117-817

RECEIVED
MAR 29 1886
JAMES H. McKENNEY
CLERK

Supreme Court of the United States,

OCTOBER TERM, 1885.

FRANCIS M. LONG AND WIFE,

PLAINTIFFS IN ERROR,

vs.

DANIEL BULLARD,

DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF GEORGIA.

BRIEF OF

CLIFFORD ANDERSON,

Counsel for Defendant in Error.

J. W. Burke & Co., Printers, Macon, Ga.

Francis M. Long and Wife, Plaintiffs in Error, vs. Daniel Bullard, Defendant in Error.

IN ERROR TO THE SUPREME COURT OF GEORGIA.

The material facts of this case are as follows, as shown by the record, viz:

Daniel Bullard filed a bill in the Superior Court of Bibb county, Georgia, to foreclose as an equitable mortgage, a deed to certain lands which had been executed in favor of Bullard by Francis M. Long and his wife, to secure the payment of a promissory note made to Bullard by Long and his wife for $1,220.00, and which, if not promptly paid, was to bear interest from its date at the rate of 10 per cent. per annum—also for all costs and Counsel fees incurred by Bullard or his transferee in collecting said note. The note and deed were both made on the 18th day of November, 1870.

Bullard alleged in his bill, that said note was made for money borrowed to satisfy a mortgage on said land executed by Long, on the 14th day of April, 1868, which had been foreclosed and under which judgment of foreclosure the land was about to be sold when the loan was procured, and that the money loaned was applied to the satisfaction of said mortgage.

Francis M. Long, in his answer to said bill, resisted the foreclosure sought by Bullard, by alleging that, since the execution of said deed, he had been adjudged a bankrupt on his own petition; that he had returned said land as his property in his schedule in bankruptcy; that Bullard had notice of his petition in bankruptcy; that said land had been set apart to him as an exemption by the Bankrupt Court, without objection; and that he had been duly and legally discharged,

in said bankruptcy proceedings from said debt, which was provable in bankruptcy. He claimed also that only $727.94 of the money borrowed from Bullard had been applied to the mortgage executed on the 14th day of April, 1868.

The case, on these and other issues, went to trial at the October Term, 1880, of said Superior Court, and resulted in a verdict charging said land with the payment of said debt to the amount of $1,000.40 principal, $820.03 for interest to that date and $200.00 for attorney's fees.

On the trial it was admitted that said Long had been adjudged a bankrupt on his own petition; that Bullard was notified of said petition but did not appear or prove said debt; that Long returned said land in his schedule as his property; that said land was set apart to Long as an exemption, under said bankruptcy proceedings; and that Long had received his final discharge in bankruptcy.

Long and wife made a motion for a new trial on several grounds, one of which was because the Court had charged the jury that "Long's discharge in bankruptcy will not prevent Bullard from recovering if he lent defendants the money, at their solicitation, to relieve the property from an incumbrance created on the 14th day of April, 1868."

The Judge of said Superior Court granted a new trial, on the ground that the verdict was for more than it ought to have been—holding that "the money not paid to remove the incumbrance created by the mortgage of the 14th of April, 1868, and the money for attorney's fees should not, by a judgment of foreclosure, be enforced against the homestead of Mrs. Long," which was a question in the case under a homestead which had been granted to her by the State Court. The Judge did not allow the motion for a new trial on any of the other grounds taken therein.

To this judgment granting a new trial, Bullard excepted, and sued out a writ of error to the State Supreme Court—no cross bill of exceptions having been filed by Long or his wife to the judgment overruling the other grounds of the motion for a new trial, one of which was the charge of the Court as to Long's exemption above mentioned.

The case thus made, by the writ of error sued out by Bullard, was heard in the State Supreme Court at its September Term, 1881,

and that Court affirmed the judgment granting a new trial, unless Bullard would write off from the verdict in his favor the sum of $300.00. No exception was then filed to this judgment of the Supreme Court and no writ of error was sued out.

At a subsequent term of the Superior Court, Bullard having written off $300.00 from said verdict as required by the Supreme Court, said Superior Court rendered a decree, charging said land with the payment of the amounts stated in said verdict—less the $300.00 remitted as required.

Long and wife filed a bill of exceptions to the proceedings last mentioned and carried the case again to the State Supreme Court, which held that its former judgment was conclusive of the questions then made, and that the decree excepted to was in conformity with that judgment, and that the failure of Long and wife to except to the overruling, by the Superior Court, of their motion for a new trial, on the grounds other than that on which it was allowed, was conclusive against them and that the matter could not now be reopened. (See 69 Ga., 678.)

Thereupon this writ of error was sued out.

In view of the foregoing facts, it is respectfully insisted:

1. That no Federal question is made in the case brought here for review.

The Judge of the Superior Court, in his charge to the jury, ruled on the efficacy of Long's exemption, but that ruling was not excepted to by the present Plantiff's in error and has never been passed on by the State Supreme Court.

In Singleton vs. South-western Railroad, 70 Ga., 464, the Supreme Court of Georgia says:

"There were five grounds upon which the defendant asked the Court to grant a new trial; the judgment put it upon one specified ground, and that alone, thereby overruling it on the other four. That ruling, so made, was excepted to, brought to this Court and error assigned thereon. No cross-bill of exceptions was taken to the overruling of the other grounds, and which was necessary to have been done in order to secure from this Court a direct decision upon the questions therein made, as provided by the Act of 1880. This not having been done, this Court must deal with the judgment grant-

ing the new trial, and consider it just as it was passed on by the Judge below." (See pages 472–3.)

In the case of Broach vs. Smith, executor, the Supreme Court of Georgia has recently held that the *only* question it decided in *this* case was, "that the money loaned, which was not used in discharging liens on the homestead property, should constitute no part of the judgment of foreclosure." (See opinion of Court, by Blandford, J., appended to brief of counsel for plaintiffs in error.)

Plaintiffs in error, having neglected to sue out a bill of exceptions to the ruling of the Judge of the Superior Court, as to the exemption in bankruptcy, within thirty days after said decision was made, they were concluded, and could not afterwards have that ruling reviewed by the State Supreme Court.

Section 2921 of the Code of Georgia provides that "all writs of error must be sued out within thirty days from the adjournment of the Court where the decision complained of was made, or, if made at chambers, from the time of the decision." (See, also, Code, section 4252.)

See, also, 6th Georgia, 578, where the Court says, "The bill must now be certified and signed within thirty days from the adjournment of the term. A bill not signed within that time is not, by the law of the State, cognizable by this Court; and the bill or the record, or both, must show that it is signed within that time."

The Supreme Court of the State cannot review its own judgment once made, in a case between the same parties. Such a judgment is irreversible.

When the Court, therefore, decided that the verdict and decree rendered in this case might stand if Bullard would remit the sum of $300.00, and this was done, and the decree modified accordingly, plaintiffs in error could not have that judgment reviewed. Hence, the Court says, in passing on the writ of error sued out for that purpose, (see 69th Georgia, 683 :)

"The judgment of this Court, when the case was before heard, was that of a full Bench, and between the same parties in the same case, and the rulings then made cannot be reinvestigated or set aside."

To the same effect is Gray vs. Obear, executor, 59th Ga., 675.

The failure to take a writ of error to the judgment of the Superior Court, subjecting the land to Bullard's lien, notwithstanding the exemption in bankruptcy, could not be cured by interposing the exemption as an objection to the modification of the decree in conformity with the decision of the Supreme Court. That question was *res judicata*. (59th Georgia, 675.) There was *then* no possible way of getting it before the State Supreme Court for adjudication, plaintiffs in error having failed to except within thirty days after it was ruled on by the Judge of the Superior Court.

2d. Whether Bullard's deed is good as an equitable mortgage, is a question which is also *res judicata*, as is clearly shown by the decision pronounced by Blandford, J., a copy of which is appended to the brief of counsel for plaintiff in error.

Moreover, that question depends upon the proper interpretation of the Statutes of the State relating to conveyances made to secure loans. The conveyance in this case has been held by the State Courts to be a good, equitable mortgage under that statute, and if that decision had been excepted to, (which it was not,) it would not be reviewable by this Court.

3d. If the Court holds that the decision of the State Superior Court, relative to Long's exemption in bankruptcy, is properly here for review, then it is respectfully contended that Bullard's lien was unaffected by the bankruptcy of Long, or by any proceedings which took place in consequence thereof.

In Assignee of Wicks & Co. vs. Perkins, 1 Wood's Reports, 383, it is ruled that "the lien of a mortgage creditor, on the real property of a bankrupt, is not lost by his failure to prove his debt, so that after the end of the proceedings in bankruptcy, he cannot enforce his lien. (See Ditto, p. 661. See, also, Eyster vs. Gaff *et al.*, 91 U. S., 521; McHenry vs. LaSociete, etc., 95 U. S., 58.)

The lien, in this case, was created to remove an incumbrance existing as far back as April 14th, 1868.

Under the State Constitution of 1868, which was adopted subsequent to April 14th of that year, and which was of force in 1871, all homestead exemptions are subject to be sold to pay money borrowed to remove an encumbrance on the property embraced in the homestead. (See Code of 1873, section 5135; 48th Georgia, 148; 59th Georgia, 230.)

When property is encumbered by a lien it is only the bankrupt's *sub modo*. (Bump on Bankruptcy, (8th edition) pp. 152–3; *In re* George W. Dillard, 9 Bank Reg., 8; *In re* Daniel Deekert, 10 Bank Reg., 1.)

Section 5045 Revised Statutes of the United States exempts only such property as was exempt from sale, etc., by State laws in 1871. The foregoing authorities show that land charged with a lien created for the payment of money borrowed to remove an encumbrance, was not exempt from sale for the discharge of such a debt, by the laws of Georgia, in the year specified. Bullard's lien is of that character.

CLIFFORD ANDERSON,

Counsel for Defendant in Error.

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SUPREME COURT U. S.
FILED
MAR 31 1886
JAMES H. McKENNEY,
CLERK

IN THE
Supreme Court of the United States.

No. 206.

FRANCIS M. LONG ET AL.

vs.

DANIEL BULLARD.

Error from the Supreme Court of Georgia.

BRIEF OF T. B. GRESHAM, COUNSEL FOR PLAINTIFFS IN ERROR, IN REPLY TO DEFENDANT IN ERROR.

JUDD & DETWEILER, PRINTERS.

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In reply to the argument of Mr. Anderson, counsel for defendant in error, we would respectfully submit that it consists almost entirely of formalities and technicalities applicable not to the case before this Court, but solely to the rules and practices of the courts of Georgia—as to how, when, and on what rules the supreme court of Georgia will review the decisions and correct the errors of the superior courts of that State.

The two points on which we claim that there was error, and on which the writ of error was taken, are, 1, that Long was discharged from this debt by his discharge in bankruptcy; 2, that the exemption allowed him by the bankrupt court to lots Nos. 5 and 6 was good and valid against this debt in whatever light it might be considered. Both of these are Federal questions, because they depend solely on the

bankrupt law, and both of which have been denied him by the judgment of the superior court and also by the supreme court of Georgia. This cannot be denied, for, notwithstanding the fact that the judge of the latter court in delivering his opinion in this case (69 Ga., 683) does say that the Federal questions now raised by Long and wife had already been ruled adversely to them and that this precludes the court passing upon them again, the broad fact remains that these questions *were* again made distinctly in the bill of exceptions then before the court, and were again distinctly ruled upon adversely to the plaintiff in error, the judgment of the court being as follows:

"This case came before the court upon a transcript of the record from the superior court of Bibb county, and, after argument heard, it is considered and adjudged by the court that the judgment of the court below be affirmed." (See "Additions to Record," p. 2.)

Such a judgment is a distinct denial of every question made in the bill of exceptions, and the fact that the court had passed upon them once before, while it may be a reason for their not investigating the points made, did not prevent their giving judgment upon them, which was in fact done.

Mr. Anderson does not deny this, but insists that we have not taken indispensable steps necessary to get them before the supreme court of Georgia, so that that court might pass upon them directly and fairly in this case, and that, having failed to do this, there was no question for us to bring to this court; but he fails to support this position by authority, and there is certainly nothing in the practice or rulings of the Supreme Court of the United States to warrant it, nor in the act of Congress. All that the act of Congress requires in order to authorize a writ of error is that the judgment or decree excepted to should be a *final* one. Now, which of the judgments rendered by the supreme court of Georgia was the final one—the one which reversed the judgment of the

court below on conditions or that upon which this writ of error was taken? Certainly the latter. The first was applicable alone to the judgment of the court below granting a new trial on the sole ground that the charge of attorney's fees was an improper one, not against Long's exemption in bankruptcy, but against the wife's homestead, taken out under the State law—a question not involved in this case. In that decision the court neither passed upon nor considered anything but that solitary question, deciding nothing upon the question of discharge in bankruptcy, its effect on this debt, upon the validity of this exemption, or upon the question of whether this was an equitable mortgage upon this property. Not one of these questions was before the court and, under their construction of the Georgia law, they could not pass upon and decide either of them in that way, nor did they attempt to do so. On the contrary, they expressly rule in the case of "Brouch *vs.* Smith"—attached in full to our original brief in this case—that what was said by the judge in pronouncing the opinion in Bullard *vs.* Long, 68 Ga., 821, was "mere *obiter dictum*," and "that there was no such question made in the record in that case," so that up to the time of the rendition of this last decision no final decision of any question made in the case had been rendered, the judgment rendered previously having been an affirmance of the decision of the court below granting a new trial, and it became necessary for Bullard, who was then the plaintiff in error, to go back to the superior court, and either submit to a new trial or else alter and amend his verdict and take a new and entirely distinct decree before he could subject the defendant's exemption in bankruptcy to his debt, and involving new proceedings in said court, and when the complainant came back into the court below, as he was compelled to do, he was met by defendant with objections to his decree on the ground that it was in violation of the law. He attempted to do by this decree what the act of Congress said should not be done. Complainant under-

took to embody in this decree—as he is obliged to do in all equity proceedings wherever in force—all the proceedings, actions, and conclusions of the cause up to that time in order to give effect to them, and without this final step all that had gone before would go for nothing. And here we insist was the true time and place to make our points of resistance, and we did so. We objected to that decree upon the grounds set out in the record, and when they were overruled we excepted, as we had the right to do. No pretence is made but that the court had jurisdiction; that the questions were fairly made and properly carried up for review. Had this not been true the bill of exceptions would have been dismissed; but no claim of this sort was made and the case came on to be heard on all the grounds of the exception (see Record, pp. 1 to 3), and they were tried by the supreme court of Georgia and decided by it, and the judgment of the court below affirmed. No matter upon what grounds that decision was put, it was complete and final, and the only adjudication of the points at issue by that court, and it was from this decision only that a writ of error could be taken to this court. Is it not perfectly clear that had we tried to sue out a bill of exceptions at a different stage of the cause, as is contended for by Mr. Anderson, that we would have failed in getting a hearing before the supreme court of Georgia, and could have had no writ of error from that court to this? (24 How., 426; 18 Wall., 628; 14 Wall., 402.) We could not, and we *did* not, get a decision until this last hearing, and then all the case was before them and both these Federal questions made and determined, as the record will show.

That the supreme court of Georgia recognizes this principle and more is evidenced by the case of Brady *vs.* Brady, 71 Ga., 71. There the bankrupt interposed his exemption in bankruptcy as a plea to the foreclosure of a mortgage upon the property set apart. The supreme court decided that the plea was bad and must be stricken, and, though the

supreme court made a technical affirmance of this judgment by dismissing the bill of exceptions, still, afterwards, in the same case, when the bankrupt filed an illegality to the execution thus foreclosed, the court held that a levy could not be made upon the exempted property, and that he was not concluded by the affirmance of the judgment in the foreclosure proceedings. If a bankrupt could thus reach this vital question by a mere illegality much more could he do so by objecting to the allowance of a decree in an equity cause, and if he was not concluded by the direct affirmance in the case in 71 Georgia Reports surely he would not be held to be concluded by an indirect affirmance in a case which had never been before the court on the question *at all.*

But defendant in error insists that this Court will not consider the question of whether or not this is a good lien under the law of Georgia, and that it was "*res adjudicata*" under the decision in 68 Ga., 821. We submit that as to the question of the validity of this lien, while it may not be for this Court to *decide*, it becomes important for them to see what the Georgia courts have ruled as to a lien under this statute when the consideration is tainted with usury.

In the case of Brouch *vs.* Smith, attached to our brief, they have expressly ruled that the point was not made in Long *vs.* Bullard, 68 Ga., 821, and it cannot, therefore, be held to be *res adjudicata* against Long in this case, and they then go further, and for the first time decide that such a lien is absolutely void, and that the debt secured thereby is discharged by the discharge of the debt—the very point we are contending for in this case.

But even if this lien is held to be a good equitable mortgage, as claimed by defendant in error, then we contend that under section 5045 of the Revised Statutes of the United States this exemption in bankruptcy was valid against all debts of the bankrupt whatever, the language being that "such exemptions shall be valid against debts contracted before the passage and adoption of such State constitutions and laws,

as well as those contracted after the same, and against liens, by judgment or *decree* (as is this case), of any State court, any *decision of any State court rendered since the adoption of such constitution and laws to the contrary notwithstanding*," which act of Congress seems to have been passed expressly to meet just such decisions as those of the Georgia court which we are now reviewing. The bankrupt takes his exemption to the amount allowed by the State law, but he takes it *under the Federal law*, and by that law it is to be governed.

R. F. LYON,
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Att'ys for Pl'ffs in Error.